Federal Register

10–24–07 Wednesday
Vol. 72 No. 205 Oct. 24, 2007

Pages 60227–60532

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28319; Directorate Identifier 2007–NE–27–AD; Amendment 39–15243; AD 2007–22–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80C2D1F Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CF6–80C2D1F turbofan engines, installed on, but not limited to, McDonnell Douglas Corporation MD–11 series airplanes. This AD requires removing previous software versions from the engine electronic control unit (ECU). Engines with new version software will have increased margin to flameout. This AD results from reports of engine flameout events during flight, including reports of events where all engines simultaneously experienced a flameout or other adverse operation. Although the root cause investigation is not yet complete, we believe that exposure to ice crystals during flight is associated with these flameout events. We are issuing this AD to minimize engine flameout caused by ice accretion and shedding during flight.

DATES: This AD becomes effective November 28, 2007.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

The Docket Operations office is located at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *john.golinski@faa.gov;* telephone: (781) 238–7135, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–80C2D1F turbofan engines, installed on McDonnell Douglas Corporation MD–11 series airplanes. We published the proposed AD in the **Federal Register** on July 17, 2007 (72 FR 39039). That action proposed to require removing previous software versions from the engine ECU.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Clarification

Boeing and GE request clarification of the statement that the AD action results from reports of engine flameout events during flight, including reports of events where all engines simultaneously experienced a flameout or other adverse operation. The commenters point out that there have been no all-engine flameout events on MD–11 series airplanes.

We disagree. While we agree that no all-engine flameout events on the MD–11 have occurred, single and multiple engine flameout events have taken place. We did not change the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 175 CF6–80C2D1F turbofan engines installed on McDonnell Douglas Corporation MD–11 series airplanes of U.S. registry. We estimate it will take about 6 work-hours per ECU. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost to U.S. operators to be $63,120. Our cost estimate is exclusive of warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2007–22–07 General Electric Company: Amendment 39–15243. Docket No. FAA–2007–28319; Directorate Identifier 2007–NE–27–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80C2D1F turbofan engines, installed on, but not limited to, McDonnell Douglas Corporation MD–11 series airplanes.

Unsafe Condition

(d) This AD results from reports of engine flameout events during flight, including reports of events where all engines simultaneously experienced a flameout or other adverse operation. We are issuing this AD to minimize engine flameout due to ice accretion and shedding during flight. Exposure to ice crystals during flight is believed to be associated with these flameout events.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Interim Action

(f) These actions are interim actions due to the on-going investigation, and we may take further rulemaking actions in the future based on the results of the investigation and field experience.

Engine Electronic Control Unit (ECU) Software Removal

(g) At the next shop visit of the engine or of the ECU, whichever occurs first, and not to exceed 60 months from the effective date of this AD, remove the following software versions from the ECUs:

TABLE 1.—REMOVAL OF ECU SOFTWARE VERSIONS

Software version	Installed in ECU Part No.
(1) 8.5.A ...	1851M51P01, 1851M51P02, 1851M52P01, 1851M52P02, 1851M53P01, 1851M53P02
(2) 8.3C ...	1471M69P01, 1471M69P02, 1519M91P01
(3) 8.3.D ..	1519M91P02
(4) 8.3.E ...	1519M91P03, 1519M91P04
(5) 8.3.F ...	1519M91P05
(6) 8.3.G ..	1519M91P06, 1820M34P01
(7) 8.3.H ..	1519M91P07, 1820M34P02
(8) 8.3.J ...	1519M91P09, 1519M91P10, 1820M34P04, 1820M34P05

Previous Software Versions of ECU Software

(h) For a period of 24 months after the effective date of this AD, once an ECU containing a software version not listed in Table 1 of this AD is installed on an engine, that ECU can be replaced with an ECU containing a previous version of software listed in Table 1.

(i) Once the software version listed in Table 1 of this AD has been removed and new FAA-approved software version is installed in an ECU, reverting to those older software versions in that ECU is prohibited.

(j) After 60 months from the effective date of this AD, use of an ECU with a software version listed in Table 1 of this AD is prohibited.

Definitions

(k) For the purposes of this AD:

(1) Next shop visit of the ECU is when the ECU is removed from the engine for overhaul or maintenance after the effective date of this AD.

(2) Next shop visit of the engine is when the engine is removed from the airplane for maintenance in which a major flange is disassembled after the effective date of this AD. The following engine maintenance actions, either separately or in combination with each other, are not considered a next shop visit of the engine:

(i) Removal of the upper high pressure compressor (HPC) stator case solely for airfoil maintenance.

(ii) Module-level inspection of the HPC rotor stages 3–9 spool.

(iii) Replacement of stage 5 HPC variable stator vane bushings or lever arms.

(iv) Removal of the accessory gearbox.

(v) Replacement of the inlet gearbox polytetrafluoroethylene seal.

Alternative Methods of Compliance

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(m) Special flight permits are not authorized.

Related Information

(n) Information on removing ECU software and installing new software, which provides increased margin to flameout, can be found in GE Service Bulletin No. CF6–80C2 S/B 73–0351, dated April 11, 2007.

(o) Contact John Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *john.golinski@faa.gov;* telephone: (781) 238–7135, fax: (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 17, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–20813 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28115 Directorate Identifier 2007–CE–045–AD; Amendment 39–15235; AD 2007–21–17]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There has been a report of landing gear radius rods suffering cracks starting in the flashline near the microswitch boss. Such cracks can result in loss of the normal hydraulic system and may lead to a landing gear collapse. Main landing gear collapse is considered as potentially hazardous/

catastrophic. This AD mandates additional inspections considered necessary to address the identified unsafe condition.

Note: The cause of this cracking is not related to previous cracking of the radius rod cylinder addressed by BAE Systems SB 32–JA040945 (CAA AD G–2005–0010), however, the consequences of a failure are the same.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 28, 2007.

On November 28, 2007, the Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 6, 2007 (72 FR 36914). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There has been a report of landing gear radius rods suffering cracks starting in the flashline near the microswitch boss. Such cracks can result in loss of the normal hydraulic system and may lead to a landing gear collapse. Main landing gear collapse is considered as potentially hazardous/catastrophic. This AD mandates additional inspections considered necessary to address the identified unsafe condition.

Note: The cause of this cracking is not related to previous cracking of the radius rod cylinder addressed by BAE Systems SB 32–JA040945 (CAA AD G–2005–0010), however, the consequences of a failure are the same.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Comment Issue: Compliance Time

APPH, the original equipment manufacturer of the main landing gear of the affected airplanes, expresses concern over being able to supply the necessary parts for the mandatory replacement. APPH understands the FAA's policy on aging commuter class aircraft, but states that all airplanes will have accumulated 8,000 total landings. Therefore, the proposed AD would require the replacement on all airplanes within 100 hours time-in-service (TIS) after the effective date of the AD. APPH recommends a compliance time of ''at the next scheduled overhaul.''

The FAA partially concurs. We understand the problem with supplying parts for all airplanes within 100 hours TIS. However, the airplanes may not have ''scheduled overhauls,'' since the overhaul program is a recommended overhaul program and not a mandatory overhaul program. The FAA has determined that changing the 100-hour TIS grace period to 12 months would eliminate the repetitive inspections and provide additional time for operators to acquire the needed parts.

We are changing the mandatory replacement compliance time in the final rule AD action to read ''upon reaching 8,000 total landings on the main landing gear radius rods or within the next 12 months after the effective date of this AD, whichever occurs later.''

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the AD.

Costs of Compliance

We estimate that this AD will affect 190 products of U.S. registry. We also estimate that it will take about 14 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $10,000 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,112,800 or $11,120 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The

street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–21–17 British Aerospace Regional Aircraft: Amendment 39–15235; Docket No. FAA–2007–28115; Directorate Identifier 2007–CE–045–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There has been a report of landing gear radius rods suffering cracks starting in the flashline near the microswitch boss. Such cracks can result in loss of the normal hydraulic system and may lead to a landing gear collapse. Main landing gear collapse is considered as potentially hazardous/catastrophic. This AD mandates additional inspections considered necessary to address the identified unsafe condition.

Note: The cause of this cracking is not related to previous cracking of the radius rod cylinder addressed by BAE Systems SB 32–JA040945 (CAA AD G–2005–0010), however, the consequences of a failure are the same.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Initially within the next 3 months after November 28, 2007 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 12 months until the replacement required by paragraph (f)(2) or (f)(3) of this AD is done, inspect the main landing gear radius rod forged cylinder flashline following the accomplishment instructions of British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA060741, dated November 1, 2006.

(2) If cracks are found during any inspection required by this AD, before further flight, replace the radius rod assembly with a serviceable unit.

(i) If the radius rod assembly includes the parts described in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD, then the repetitive inspections of this AD are no longer required.

(ii) If the radius rod assembly does not include the parts described in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD, then continue to repetitively inspect at intervals not to exceed 12 months until you comply with paragraph (f)(3) of this AD.

(3) Upon reaching 8,000 total landings on the main landing gear radius rods or within the next 12 months November 28, 2007(the effective date of this AD), whichever occurs later, replace the radius rod assembly by installing one of the following part numbers (P/N). This terminates the repetitive inspection requirement of this AD:

(i) P/N 1847/A to 1847/L with strike-off 12 or 13, or 1847/M or later; and

(ii) P/N 1862/A to 1862/L with strike-off 12 or 13, or 1862/M or later.

(4) *For airplanes under 8,000 total landings on the main landing gear radius rods:* Before further flight after the initial inspection required by paragraph (f)(1) of this AD, do not install a radius rod assembly that is not one of the parts specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD on an affected airplane, unless it has been inspected in accordance with paragraph (f)(1) of this AD.

(5) *For those airplanes with parts listed in paragraph (f)(3) of this AD:* Before further flight after installing the parts in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD, do not install any radius rod assembly that does not incorporate the parts in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD.

Note 1: When a compliance time in this AD is presented in landings and you do not keep the total landings, you may multiply the total number of airplane hours time-in-service by 0.75 to calculate the number of landings for the purposes of doing the actions required by this AD.

Note 2: Maintenance procedures for each radius rod overhaul are included in APPH Service Bulletin 1847–32–12 or 1862–32–12, both dated September 2006, as applicable. You may do such maintenance using the above referenced bulletins or through a fluorescent dye penetrant inspection of the cylinder counterbore as specified in APPH Component Maintenance Manual (CMM) 32–10–16 at Revision 11 or higher.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI and service bulletin allow the radius rod assembly to be repetitively inspected for the life of the airplane and the repetitive inspection requirement is terminated if improved design parts are installed. Many of the affected airplanes are used in commuter operations (14 CFR part 135). The FAA's policy on aging commuter class aircraft states that when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. Therefore, the FAA is mandating the replacement of the radius rod assembly with improved design parts no later than reaching 8,000 total landings on the main landing gear radius rods or within the next 12 months after the effective date of this AD, whichever occurs later.

(2) The MCAI includes a reference to APPH service bulletins as an option for maintenance overhaul procedures. Because we do not require general maintenance in our ADs, we added a note referencing these bulletins as an option to use for overhaul procedures.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to European Aviation Safety Agency (EASA) AD No. 2007–0087, dated March 30, 2007; and BAE SYSTEMS Jetstream Series 3100 and 3200 Service Bulletin 32–JA060741, dated November 1, 2006; for related information.

Material Incorporated by Reference

(i) You must use BAE SYSTEMS Jetstream Series 3100 and 3200 Service Bulletin 32–JA060741, dated November 1, 2006 to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact British Aerospace (Operations) Limited Trading at British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire KA9 2RW, Scotland.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on October 10, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20364 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28923; Directorate Identifier 2007–NM–133–AD; Amendment 39–15242; AD 2007–22–06]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Over the years, several Fokker 100 (F28 Mark 0100) operators reported that a MLG (main landing gear) wheel fell off during regular operation of the aircraft. These incidents occurred due to a missing spacer, which had inadvertently not been installed during a previous wheel change. Omitting the installation of the wheel spacer allows the wheel to move sideways along the axle, which subsequently leads to bearing failure, followed by loss of the wheel. * * * This condition, if not corrected, * * * could conceivably result in loss of control of the aircraft during the take-off run, landing rollout or taxiing operations. * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 28, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 28, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45956). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Over the years, several Fokker 100 (F28 Mark 0100) operators reported that a MLG (main landing gear) wheel fell off during regular operation of the aircraft. These incidents occurred due to a missing spacer, which had inadvertently not been installed during a previous wheel change. Omitting the installation of the wheel spacer allows the wheel to move sideways along the axle, which subsequently leads to bearing failure, followed by loss of the wheel. Investigation by Fokker and Messier-Dowty has shown that two separate items, the spacer and the axle nut, can be replaced by a single axle-nut/spacer assembly, to prevent the possibility of omitting the spacer. In 1995, Messier-Dowty issued Service Bulletin (SB) F100–32–72 to make sure that the operator does not assemble the axle nut without the spacer. Fokker subsequently issued SB F100–32–096 to notify Fokker 100 operators of the (optional) Messier-Dowty SB's existence. At a later stage, Fokker revised the SB to the status of ''recommended''. In spite of all this attention to the spacer problem, wheel losses are still being reported due to missing wheel nut spacers. This condition, if not corrected, may lead to further wheel loss incidents, each of which could conceivably result in loss of control of the aircraft during the take-off run, landing rollout or taxiing operations. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of the same type design, this Airworthiness Directive requires the replacement of the axle-nut and spacer with an integrated axle-nut/spacer assembly. In addition, the Aircraft Maintenance Manual (AMM) and Illustrated Parts Catalogue (IPC) must be amended to prevent reversal to a separate axle-nut and spacer installation during a subsequent wheel change.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 13 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $3,750 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $52,910, or $4,070 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–22–06 Fokker Services B.V.: Amendment 39–15242. Docket No. FAA–2007–28923; Directorate Identifier 2007–NM–133–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes; certificated in any category; all serial numbers, if equipped with Messier-Dowty main landing gear (MLG) units.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Over the years, several Fokker 100 (F28 Mark 0100) operators reported that a MLG (main landing gear) wheel fell off during regular operation of the aircraft. These incidents occurred due to a missing spacer, which had inadvertently not been installed during a previous wheel change. Omitting the installation of the wheel spacer allows the wheel to move sideways along the axle, which subsequently leads to bearing failure, followed by loss of the wheel. Investigation by Fokker and Messier-Dowty has shown that two separate items, the spacer and the axle nut, can be replaced by a single axle-nut/spacer assembly, to prevent the possibility of omitting the spacer. In 1995, Messier-Dowty issued Service Bulletin (SB) F100–32–72 to make sure that the operator does not assemble the axle nut without the spacer. Fokker subsequently issued SB F100–32–096 to notify Fokker 100 operators of the (optional) Messier-Dowty SB's existence. At a later stage, Fokker revised the SB to the status of ''recommended''. In spite of all this attention to the spacer problem, wheel losses are still being reported due to missing wheel nut spacers. This condition, if not corrected, may lead to further wheel loss incidents, each of which could conceivably result in loss of control of the aircraft during the take-off run, landing rollout or taxiing operations. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of the same type design, this Airworthiness Directive requires the replacement of the axle-nut and spacer with an integrated axle-nut/spacer assembly. In addition, the Aircraft Maintenance Manual (AMM) and Illustrated Parts Catalogue (IPC) must be amended to prevent reversal to a separate axle-nut and spacer installation during a subsequent wheel change.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 12 months after the effective date of this AD, replace each MLG wheel axle-nut and spacer with an integrated axle-nut/spacer assembly in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100–32–72, Revision 1, dated March 5, 2007.

Note 1: Fokker 70/100 Service Letter 102, Revision 1, dated February 12, 1998; and Fokker Service Bulletin SBF100–32–096, Revision 2, dated April 29, 2005; also pertain to this subject.

(2) As of 12 months after the effective date of this AD, no person may install an axle nut having part number (P/N) 201072670 or alternate P/N 201072765, or any spacer having P/N 201072699, on any airplane. Only axle nut subassemblies having P/N 201251273 or P/N 201650216 may be installed.

(3) Actions accomplished before the effective date of this AD in accordance with Messier-Dowty Service Bulletin F100–32–72, dated January 25, 1995, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI requires revising the AMM and IPC. As these documents are not FAA-approved, we do not require these revisions. Therefore, this AD requires compliance with paragraph (f)(2) of this AD, which accomplishes the intent of revising the AMM and IPC.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Dutch Airworthiness Directive NL–2005–008, dated June 30, 2005, and the service information identified in Table 1 of this AD, for related information.

TABLE 1.—RELATED SERVICE INFORMATION

Service information	Revision level	Date
Fokker 70/100 Service Letter 102	1	February 12, 1998.
Fokker Service Bulletin SBF100–32–096	2	April 29, 2005.
Messier-Dowty Service Bulletin F100–32–72	1	March 5, 2007.

Material Incorporated by Reference

(i) You must use Messier-Dowty Service Bulletin F100–32–72, Revision 1, dated March 5, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 12, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20814 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27777; Directorate Identifier 2006–NM–265–AD; Amendment 39–15236; AD 2007–21–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–53, DC–8–55, DC–8F–54, and DC–8F–55 Airplanes; and Model DC–8–60, DC–8–60F, DC–8–70, and DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas airplanes, identified above. This AD requires a one-time inspection to determine the configuration of the airplane. This AD also requires repetitive inspections for cracking of the tee or angle doubler, and corrective actions if necessary. This AD results from a report indicating that numerous operators have found cracks on the tee. We are issuing this AD to detect and correct stress corrosion cracking of the tee or angle doubler installed on the flat aft pressure bulkhead. Cracking in this area could continue to progress and damage the adjacent structure, which could result in loss of structural integrity of the airplane.

DATES: This AD becomes effective November 28, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 28, 2007.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC–8–53, DC–8–55, DC–8F–54, and DC–8F–55 airplanes; and Model DC–8–60, DC–8–60F, DC–8–70, and DC–8–70F series airplanes. That NPRM was published in the **Federal Register** on April 5, 2007 (72 FR 16744). That NPRM proposed to require a one-time inspection to determine the configuration of the airplane. That NPRM also proposed to require repetitive inspections for cracking of the tee or angle doubler, and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Clarify Paragraph (f) of the NPRM

Air Transport Association (ATA), on behalf of its member UPS, requests that we reword the first section of paragraph (f) of the NPRM for clarity. The commenters state that paragraph (f) of the NPRM mandates an inspection to determine if a tee or angle is installed. The commenters point out that all airplanes have a tee installed, as this is the baseline configuration, and that the angle is a repair on top of the tee. UPS suggests that we revise the paragraph to state instead, " * * * inspect the left and right side of the flat aft pressure bulkhead to determine if a repair has been installed. As noted in Boeing Service Bulletin DC8–53A081, Configuration 1 applies to airplanes with no repairs installed; Configuration 2 applies to airplanes with repairs installed in accordance with DC–8 SRM 53–2–5, Figure 9; and Configuration 3 applies to repairs which are not

installed in accordance with DC–8 SRM 53–2–5, Figure 9 * * *''

In addition, ABX Air, Inc. and UPS request that we fix a typographical error in paragraph (f). The Structural Repair Manual (SRM) reference should be 53–2–5 rather than 52–2–5.

We agree with the ATA and UPS because the suggested wording is more accurate and clear than the wording in the NPRM. We have revised paragraph (f) of this AD accordingly. We have also revised the Summary and Discussion sections of the preamble of this AD to state that the one-time inspection is simply to determine the configuration of the airplane. We have also changed the SRM reference in the AD, as requested. Operators should note that the reference to this SRM should also be 53–2–5 rather than 52–2–5 in Table 3 of Paragraph 1.E., Compliance, of Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006.

Request To Clarify Pressure Test Requirement

ATA, on behalf of its member UPS, notes that paragraph (f)(1) of the NPRM requires accomplishment of all applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006. UPS states that the applicable actions in paragraph B.4 of those instructions include a pressure test of the fuselage as given in the DC–8 aircraft maintenance manual 21–31–0. The commenters do not believe that the pressure test is necessary to accomplish either the inspections or repairs successfully. They note that Boeing concurs with deleting this requirement, and refer to Boeing Message 1–283162455–4, dated February 12, 2007, as the relevant correspondence between Boeing and UPS.

We agree that the pressure test is not necessary for accomplishing either the inspections or repairs. We have added a sentence to paragraph (f)(1) of this AD to state that where the service bulletin specifies to do the pressure test, that action is not required by this AD.

Requests To Supersede AD 93–01–15

The same commenters have three requests related to AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). The commenters believe that the AD resulting from the NPRM should supersede AD 93–01–15 for the area of concern, which is Principal Structural Element (PSE) 53.08.009 and PSE 53.08.010. The commenters also believe that the AD resulting from the NPRM should specifically mention that it removes the reporting requirements of AD 93–01–15 for the area of concern. UPS notes that a similar request to remove the reporting requirements was granted as an alternative method of compliance (AMOC) approval for all airplanes affected by AD 2006–03–04, amendment 39–14468 (71 FR 5969, February 6, 2006). UPS also requests that we revise paragraph (g) of the NPRM (the AMOC paragraph) to mention that prior AMOC approvals for AD 93–01–15 for repairs in the area of concern be automatically accepted as AMOCs for this new AD.

We partially agree with the commenters. We agree that inspections and repairs required by this AD of specified areas of PSEs 53.08.009 and 53.08.010 are acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of AD 93–01–15, including the reporting requirements for those specified areas. The remaining areas of the affected PSEs must be inspected and repaired, as applicable, in accordance with AD 93–01–15. We also agree that AMOCs for repairs granted previously in accordance with AD 93–01–15 are acceptable for compliance with the corresponding actions required by this AD. We have added new paragraphs (g)(4) and (g)(5) to this AD to address these requests.

We do not agree that it is necessary to supersede AD 93–01–15. We find that the revisions to this AD are sufficient to address the area of concern noted by the commenters.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 321 airplanes of the affected design in the worldwide fleet. This AD affects about 139 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Fleet cost
Inspection to determine the configuration of the airplane, and to determine previous inspection method.	1	$80	$11,120.
Configuration 1, per inspection cycle	11	$880, per inspection cycle	Up to $122,320, per inspection cycle.
Configuration 2, per inspection cycle	5	$400, per inspection cycle	Up to $55,600, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–21–18 McDonnell Douglas: Amendment 39–15236. Docket No. FAA–2007–27777; Directorate Identifier 2006–NM–265–AD.

Effective Date

(a) This AD becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–8–53, DC–8–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, DC–8–73F, DC–8F–54, and DC–8F–55 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006.

Unsafe Condition

(d) This AD results from a report indicating that numerous operators have found cracks on the tee installed on the left and right side of the flat aft pressure bulkhead from Longeron 9 to Longeron 13. We are issuing this AD to detect and correct stress corrosion cracking of the tee or angle doubler installed on the flat aft pressure bulkhead. Cracking in this area could continue to progress and damage the adjacent structure, which could result in loss of structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections and Related Investigative/ Corrective Actions

(f) For all airplanes: Within 24 months after the effective date of this AD, inspect the left and right sides of the flat aft pressure bulkhead to determine if a repair has been installed. As noted in Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006, Configuration 1 applies to airplanes with no repairs installed; Configuration 2 applies to airplanes with repairs installed in accordance with DC–8 Structural Repair Manual (SRM) 53–2–5, Figure 9; and Configuration 3 applies to airplanes with repairs that are not installed in accordance with DC–8 SRM 53–2–5, Figure 9. A review of airplane maintenance records is acceptable in lieu of this inspection if the applicable installation can be conclusively determined from that review.

(1) For airplanes determined to be either Configuration 1 or Configuration 2: Within 24 months after the effective date of this AD, do the applicable inspection for cracking of the tee or angle doubler, and do all applicable corrective actions before further flight, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006. Repeat the applicable inspection thereafter at the applicable interval specified in Paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006. Where the service bulletin specifies to do the pressure test, that action is not required by this AD.

(2) For airplanes determined to be Configuration 1 airplanes: A review of the airplane maintenance records to determine if the tee was previously inspected using one of the three inspection methods specified in the DC–8 Supplemental Inspection Document (SID) L26–011, Volume II, 53–10–18, and to determine that no crack was found, is acceptable to determine the type of inspection and corresponding repetitive interval if the inspection type and crack finding can be conclusively determined from that review.

(3) For airplanes determined to be Configuration 3 airplanes: Within 24 months after the effective date of this AD, repair the previous installation. Where Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006, specifies to contact Boeing for instructions, repair using a method approved in accordance with the procedures specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) Inspections and repairs required by this AD of specified areas of Principal Structural Elements (PSEs) 53.08.009 and 53.08.010 are acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of AD 93–01–15, amendment 39–8469, including the reporting requirements for those specified areas. The remaining areas of the affected PSEs must continue to be inspected and repaired, as applicable, in accordance with AD 93–01–15.

(5) AMOCs for repairs granted previously in accordance with AD 93–01–15 are acceptable for compliance with the corresponding actions required by this AD.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on October 9, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20464 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28853; Directorate Identifier 2006–NM–218–AD; Amendment 39–15241; AD 2007–22–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

At some locations, the new calculated fatigue life [for the wing to center box assembly] falls below the aircraft Design Service Goal.

The aim of this Airworthiness Directive (AD) is * * * to ensure detection of cracks on the panels and stiffeners at rib No. 1. This situation, if left uncorrected, could affect the structural integrity of the area.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 28, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 28, 2007.

The Director of the Federal Register approved the incorporation by reference of Airbus A300–600 Airworthiness Limitations Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006, as of October 31, 2007 (72 FR 54536, September 26, 2007).

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 3, 2007 (72 FR 43199). A correction of that NPRM was published in the **Federal Register** on August 15, 2007 (72 FR 45866). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During installation of the wing to the centre box junction on the Final Assembly Line, some ''taperlocks'' fasteners were found non compliant with the specification.

Fatigue tests on samples and calculation performed on non-conform fasteners demonstrated that this defect could lead to decrease the fatigue life of the wing to centre wing box assembly.

At some locations, the new calculated fatigue life falls below the aircraft Design Service Goal.

The aim of this Airworthiness Directive (AD) is to mandate repetitive inspections to ensure detection of cracks on the panels and stiffeners at rib No. 1. This situation, if left uncorrected, could affect the structural integrity of the area.

The corrective action includes contacting Airbus for repair instructions in the event of crack finding. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Clarification of Compliance Times

We added ''total'' to the flight hour compliance times in paragraphs (f)(1)(i)(A), (f)(2)(i)(A), and (f)(3)(i)(A) of the AD. The flight cycle compliance times already specify total flight cycles.

Change of Service Bulletin Appendix Reference

We changed ''including'' to ''excluding'' when referring to Appendix 01 of Airbus Service Bulletin A300–53–6154, dated June 20, 2006, in paragraph (h) and in the subparagraphs of paragraph (f) of the AD. Appendix 01 is a reporting form, and this AD does not require reporting.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 79 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $44,240, or $6,320 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–22–05 Airbus: Amendment 39–15241. Docket No. FAA–2007–28853; Directorate Identifier 2006–NM–218–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300–600 series airplanes, manufacturing serial numbers (MSN) 0815 up to MSN 0821 inclusive, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During installation of the wing to the centre box junction on the Final Assembly Line, some ''taperlocks'' fasteners were found non compliant with the specification.

Fatigue tests on samples and calculation performed on non-conform fasteners demonstrated that this defect could lead to decrease the fatigue life of the wing to centre wing box assembly.

At some locations, the new calculated fatigue life falls below the aircraft Design Service Goal.

The aim of this Airworthiness Directive (AD) is to mandate repetitive inspections to ensure detection of cracks on the panels and stiffeners at rib No. 1. This situation, if left uncorrected, could affect the structural integrity of the area.

The corrective action includes contacting Airbus for repair instructions in the event of crack finding.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Action No. 1, for the center wing box:

(i) At the later of the times in paragraphs (f)(1)(i)(A) and (f)(1)(i)(B) of this AD: Do an external ultrasonic inspection for cracking of the taperlocks fasteners of the center wing box, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006. If any crack is detected: Before further flight, contact Airbus for repair instructions, and repair.

(A) Before the accumulation of 19,800 total flight cycles or 41,200 total flight hours, whichever occurs first.

(B) Within 3 months after the effective date of this AD.

(ii) Repeat the inspection thereafter at intervals not to exceed 3,300 flight cycles or 6,900 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006.

(iii) The repetitive interval specified in paragraph (f)(1)(ii) of this AD is valid until the threshold of Airbus A300–600 Airworthiness Limitation Items (ALI) Task 571006–02–1 is reached. After reaching this threshold, the ultrasonic inspection is to be done according to Task 571006–02–1, ''Special detailed inspection (Ultrasonic) of wing junction at rib 1 horizontal flange of lower T section, between FR40 and FR47 inboard side, LH/RH,'' of Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

(2) Action No. 2, for the outer wing box:

(i) At the later of the times in paragraphs (f)(2)(i)(A) and (f)(2)(i)(B) of this AD: Do an external ultrasonic inspection for cracking of the taperlocks fasteners of the outer wing box, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006. If any crack is detected: Before further flight, contact Airbus for repair instructions, and repair.

(A) Before the accumulation of 15,200 total flight cycles or 31,700 total flight hours, whichever occurs first.

(B) Within 3 months after the effective date of this AD.

(ii) Repeat the inspection thereafter at intervals not to exceed 3,700 flight cycles or 7,700 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006.

(iii) The repetitive interval specified in paragraph (f)(2)(ii) of this AD is valid until reaching the threshold of Airbus A300–600 Airworthiness Limitation Items (ALI) Task 571022–01–2, ''Special detailed inspection (Ultrasonic) of wing-fuselage lower skin splice at rib 1 (wing side).'' After reaching this threshold, the ultrasonic inspection is to be done according to Task 571022–01–2 of Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

(3) Action No. 3, for the outer wing box:

(i) At the later of the times in paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this AD: Do an internal x-ray inspection for cracking of the taperlocks fasteners of the outer wing box, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006. If any crack is detected: Before further flight, contact Airbus for repair instructions, and repair.

(A) Before the accumulation of 20,900 total flight cycles or 43,400 total flight hours, whichever occurs first.

(B) Within 3 months after the effective date of this AD.

(ii) Repeat the inspection thereafter at intervals not to exceed 1,800 flight cycles or 3,700 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006.

(iii) The repetitive interval specified in paragraph (f)(3)(ii) of this AD is valid until reaching the threshold of Airbus A300–600 Airworthiness Limitation Items (ALI) Task 571022–02–2, ''Special detailed inspection (XRAY) of wing-fuselage lower skin splice at rib 1 (wing side).'' After reaching this threshold, the x-ray inspection is to be done according to Task 571022–02–2 of Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006–0257, dated August 24, 2006; Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006; and Airbus A300–600 Airworthiness Limitations Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006; for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–53–6154, excluding Appendix 01, dated June 20, 2006, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus A300–600 Airworthiness Limitations Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006, on October 31, 2007 (72 FR 54536, September 26, 2007).

(3) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(4) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Airbus Service Bulletin A300–53–6154, excluding Appendix 01	Original	June 20, 2006.
Airbus A300–600 Airworthiness Limitations Items Document AI/SE–M2/95A.0502/06	Issue 11	April 2006.

Issued in Renton, Washington, on October 12, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20815 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0073; Directorate Identifier 2007–NM–229–AD; Amendment 39–15240; AD 2007–22–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During cruise, an A330 operator experienced a LH (left-hand) wing tank pump #1 low pressure message followed immediately by LH wing tank stand-by pump low pressure message, then LH wing tank pumps low pressure message. The flight crew opened the cross-feed valve to feed the engine on LH wing from RH (right-hand) wing but RH wing tank pumps low-pressure message was displayed as well as advisory unbalanced fuel message. * * *

* * * * *

It has been confirmed following fuel tank entry that outlet of the LH pump #2 canister had broken due to static overload.

If this situation is not corrected, it can lead to the loss of fuel on both engines in flight * * * [and] a dual engine flameout * * *.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 8, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 8, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2007–0216–E, dated August 8, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During cruise, an A330 operator experienced a LH (left-hand) wing tank pump #1 low pressure message followed immediately by LH wing tank stand-by pump low pressure message, then LH wing tank pumps low pressure message. The flight crew opened the cross-feed valve to feed the engine on LH wing from RH (right-hand) wing but RH wing tank pumps low-pressure message was displayed as well as advisory unbalanced fuel message. It was reported that the cross-feed was closed in accordance with applicable procedure and the aircraft was landed successfully.
>
> It has been identified that both engines were gravity fed above the certified gravity feed ceiling for a brief period of time.
>
> It has been confirmed following fuel tank entry that outlet of the LH pump #2 canister had broken due to static overload.
>
> If this situation is not corrected, it can lead to the loss of fuel on both engines in flight which constitutes an unsafe condition.
>
> To prevent a dual engine flameout, this Emergency Airworthiness Directive (EAD) mandates an operational procedure which covers the scenario of small or large engine feed line ruptures and to add also a method to recover fuel in the unlikely event that the engine on the affected wing fails to restart at or below the gravity feed ceiling.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued A330 Temporary Revision 4.02.00/39, dated June 21, 2007, to the Airbus A330 Airplane Flight Manual (AFM). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because on the incident airplane, the outlet of the LH pump #2 canister to the engine fuel feed line was found ruptured. During cruise, the flightcrew followed existing AFM procedures for a FUEL L WING PUMPS LO PR ECAM caution, which resulted in an unwanted fuel transfer through the ruptured part from the right wing inner tank to the left wing inner tank. Under certain conditions, this could result in the loss of fuel to both engines and a dual engine flameout. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0073; Directorate Identifier 2007–NM–229–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–22–04 Airbus: Amendment 39–15240. Docket No. FAA–2007–0073; Directorate Identifier 2007–NM–229–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 8, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330 airplanes, certificated in any category, all certified models, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

During cruise, an A330 operator experienced a LH (left-hand) wing tank pump #1 low pressure message followed immediately by LH wing tank stand-by pump low pressure message, then LH wing tank pumps low pressure message. The flight crew opened the cross-feed valve to feed the engine on LH wing from RH (right-hand) wing but RH wing tank pumps low-pressure message was displayed as well as advisory unbalanced fuel message. It was reported that the cross-feed was closed in accordance with applicable procedure and the aircraft was landed successfully.

It has been identified that both engines were gravity fed above the certified gravity feed ceiling for a brief period of time.

It has been confirmed following fuel tank entry that outlet of the LH pump #2 canister had broken due to static overload.

If this situation is not corrected, it can lead to the loss of fuel on both engines in flight which constitutes an unsafe condition.

To prevent a dual engine flameout, this Emergency Airworthiness Directive (EAD) mandates an operational procedure which covers the scenario of small or large engine feed line ruptures and to add also a method to recover fuel in the unlikely event that the engine on the affected wing fails to restart at or below the gravity feed ceiling.

Actions and Compliance

(f) Within 10 days after the effective date of this AD, unless already done, revise the Procedures and Emergency sections of the Airbus A330 Airplane Flight Manual (AFM) to include the information in Airbus A330 Temporary Revision (TR) 4.02.00/39, dated June 21, 2007. The TR revises the procedure to follow in the event of fuel pump low pressure warnings and adds operational procedures to follow in the event of a feed fuel line rupture.

Note 1: The action required by paragraph (f) of this AD may be done by inserting into the appropriate AFM sections a copy of the TR listed in paragraph (f) of this AD. When this TR has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, provided the relevant information in the general revision is identical to that in the TR listed in paragraph (f) of this AD.

Note 2: This AFM TR will be incorporated in another AFM TR associated to the introduction of Flight Warning Computer T2 standard.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Emergency Airworthiness Directive 2007–0216–E, dated August 8, 2007, and Airbus A330 Temporary Revision 4.02.00/39, dated June 21, 2007, to the Airbus A330 AFM, for related information.

Material Incorporated by Reference

(i) You must use Airbus A330 Temporary Revision 4.02.00/39, dated June 21, 2007, to the Airbus A330 Airplane Flight Manual, to do the actions required by this AD, unless the AD specifies otherwise. (The issue date is identified only on the first page of the temporary revision; no other page of the document contains the date.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 12, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20817 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27927; Directorate Identifier 2006–NM–182–AD; Amendment 39–15239; AD 2007–22–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A300 series airplanes. This AD requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective November 28, 2007.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in the AD as of November 28, 2007.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus A300 series airplanes. That NPRM was published in the **Federal Register** on April 20, 2007 (72 FR 19823). That NPRM proposed to require revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions Since NPRM Was Issued

After we issued the NPRM, Airbus published the A300 Fuel Airworthiness Limitations, Document 95A.1928/05, Issue 2, dated May 11, 2007 (approved by the European Aviation Safety Agency (EASA) on July 6, 2007) (hereafter referred to as ''Document 95A.1928/05''). In the NPRM, we referred to Issue 1 of Document 95A.1928/05, dated December 19, 2005, as the appropriate source of service information for accomplishing the actions proposed in the NPRM. The fuel airworthiness limitations (FALs) specified in Issue 2 of Document 95A.1928/05 are the same as those in Issue 1 of Document 95A.1928/05. Airbus has revised certain task titles in Section 1 of Issue 2 of Document 95A.1928/05 and has clarified the applicability and corrected certain airplane maintenance manual (AMM) references in Section 2 of the document. Therefore, we have revised this AD by referring to Issue 2 of Document 95A.1928/05 as the appropriate source of service information.

After we issued the NPRM, EASA issued airworthiness directive 2007–0094 R1 dated May 2, 2007, to correct certain compliance times; our NPRM included the correct compliance times, which we explained as differences between the NPRM and EASA airworthiness directive 2006–0200, dated July 11, 2006. The compliance times in this AD already correspond with the compliance times of EASA airworthiness directive 2007–0094 R1. Therefore, we have revised paragraph (k) of this AD to refer to EASA airworthiness directive 2007–0094 R1.

After we issued the NPRM, Airbus published Operator Information Telex (OIT) SE 999.0079/07, Revision 01, dated August 14, 2007, to identify the applicable sections of the Airbus A300 AMM necessary for accomplishing the tasks specified in Section 1 of Document 95A.1928/05. We have added a note to paragraph (f) of this AD to refer to that OIT.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Clarify the Initial Compliance Time

TradeWinds Airlines requests that we revise paragraph (f) of the NPRM to clarify that the ''INTERVAL'' values specified in Section 1 of Document 95A.1928/05 are also the initial threshold values. The commenter states that it is unclear whether the initial compliance times are the interval values.

We agree that the values specified in the ''INTERVAL'' column of the ''MAINTENANCE/INSPECTION TASKS'' table in Section 1 of Document 95A.1928/05 should be used as the initial compliance time, as well as the repetitive interval. We have also clarified the compliance time in paragraph (f) of this AD by adding the word ''thereafter'' to more clearly state that '' * * * the repetitive inspections must be accomplished thereafter * * *.''

Request To Revise ''Relevant Service Information'' Section

Airbus requests that we revise the ''Relevant Service Information'' section to state that ''Section 1, 'Maintenance/Inspection Tasks,' of Document 95A.1928/05 describes certain FAL inspections, which are periodic inspections of certain features for latent failures that could contribute to a fire.'' In the NPRM, we specified that the latent failures could contribute to an ignition source. As justification, Airbus states that not all three tasks identified in Section 1 of Document 95A.1928/05 contribute to minimizing the risk of an ignition source: Only Task 3 minimizes the risk of an ignition source, while Tasks 1 and 2 minimize the occurrence of a combustible environment. We agree with Airbus's statements. However, we have not revised this AD in this regard since the ''Relevant Service Information'' section is not retained in a final rule.

Request To Revise the Unsafe Condition

Airbus states that it does not agree that there is an unsafe condition on Model A300 series airplanes, prior to accomplishing the maintenance/inspection tasks in Section 1 of Document 95A.1928/05. Airbus agrees that performing these tasks contributes to minimizing the risk of either an ignition source (Task 3) or the occurrence of a combustible environment (Tasks 1 and 2). In regard to the critical design configuration control limitations (CDCCLs), Airbus states that no unsafe condition exists at delivery, and that no unsafe condition will develop provided that operators observe the CDCCLs after delivery. Airbus further states that the CDCCLs are introduced to reduce the risk that an operator may inadvertently alter the design or installation, thus introducing a less safe configuration.

We infer Airbus would like us to revise the unsafe condition in this AD to incorporate its comments. We do not agree to revise the unsafe condition of this AD. Fuel airworthiness limitations (FALs) are items arising from a systems safety analysis that have been shown to have failure modes associated with an unsafe condition, as defined in FAA Memorandum 2003–112–15, ''SFAR 88—Mandatory Action Decision Criteria,'' dated February 25, 2003. These FALs are identified in failure conditions for which an unacceptable probability of ignition risk could exist if specific tasks or practices or both are not performed in accordance with a manufacturer's requirements. As Airbus notes, if an operator does not observe the CDCCLs after delivery, then an unsafe condition could occur. For this reason we must mandate Document 95A.1928/05 to ensure the CDCCLs are observed. We have not changed this AD in this regard.

Requests To Clarify the Requirements of Paragraph (h)

Airbus requests that we revise paragraph (h) of the NPRM to state that operators are required to update their internal procedures and documentation to ensure appropriate management and control of the CDCCLs specified in Section 2 of Document 95A.1928/05. Airbus states that paragraph (h) of the NPRM is unclear about what an operator is expected to do with the CDCCLs. Airbus further states that paragraph (h) of the NPRM tells operators to add the CDCCLs to the ALS, but Airbus states that it has already done so for operators. Airbus also states that the ALS is part of the type certification (TC) documentation and is not changed by operators. TradeWinds Airlines requests that we provide guidance as to what is acceptable for compliance with the requirements of paragraph (h) of the NPRM. TradeWinds Airlines states that simply listing the CDCCLs in a maintenance schedule would have little or no effect on preserving critical ignition source prevention features. The commenter further states that the Airbus A300 AMM would be the source of the approved data for accomplishing the tasks related to the CDCCLs, and that revisions to the AMM would be sufficient for providing instruction to retain the critical ignition source prevention features.

Although we understand Airbus's concerns and welcome any feedback that would improve the readability or usability of an AD, the suggested language is too vague to be legally enforceable, so we cannot use it in this AD. We understand that Airbus has revised its airworthiness limitations document. However, according to section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), no person may operate a product unless the requirements of an applicable AD have been met. The burden is placed on the operator, not on the manufacturer, to ensure that the requirements of an AD are met. The requirement, as stated in the NPRM, is for the operator to revise its copy of the airworthiness limitations document. This ensures that each affected operator maintains a current copy of the required airworthiness limitations.

Concerning Airbus's statement that paragraph (h) of the NPRM does not clearly specify what an operator is expected to with the CDCCLs, we clarify that paragraph (h) requires affected operators to revise their copies of the airworthiness limitations document to include the CDCCL requirements. This is the only requirement imposed under this AD for CDCCLs; once this revision has been accomplished, compliance with paragraph (h) of this AD has been completed. Subsequently, section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) requires an affected operator to comply with the revised Airworthiness Limitations document. Ensuring that one's maintenance program and the actions of its maintenance personnel are in accordance with the Airworthiness Limitations is required, but not by the AD. According to 14 CFR 91.403(c), no person may operate an aircraft for which airworthiness limitations have been issued unless those limitations have been complied with. Therefore, there is no need to further expand the requirements of the AD beyond that which was proposed because 14 CFR 91.403(c) already imposes the appropriate required action after the airworthiness limitations are revised. We have not changed this AD in this regard.

Request To Cite Airbus ALS Part 5

Airbus disagrees with the statement that it has not yet published a document titled, ''Airbus ALS Part 5, Fuel Airworthiness Limitations,'' for Model A300 series airplanes. We made that statement in the ''Clarification of Service Information'' section of the NPRM. Airbus acknowledges that Document 95A.1928/05 has not yet been written in the ALS Part 5 format, but that it intends to do so after Issue 2 of Document 95A.1928/05 has been approved. Airbus states that EASA airworthiness directive 2007–0094 R1 correctly refers to Document 95A.1928/05, since that document contains the actual limitations.

We infer that Airbus requests we revise paragraphs (f) and (h) of this AD to incorporate the information in '' * * * Airbus ALS Part 5, Fuel Airworthiness Limitations, as defined in Airbus A300 Fuel Airworthiness Limitations, Document 95A.1928/05. * * *'' We agree that the relevant fuel airworthiness limitations are specified in Document 95A.1928/05. In review of the service information Airbus has published on-line, we could not find any document titled ''Airbus ALS Part 5, Fuel Airworthiness Limitations.'' The Office of the Federal Register (OFR) requires that we incorporate by reference all the documents that are necessary for accomplishing the requirements of this AD. Further, we are required to cite the document title exactly as it appears on the document. Since the limitations are in Document 95A.1928/05, we do not need to refer to Airbus ALS Part 5. We have not changed this AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 30 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $4,800, or $160 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–22–03 Airbus: Amendment 39–15239. Docket No. FAA–2007–27927; Directorate Identifier 2006–NM–182–AD.

Effective Date

(a) This AD becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 series airplanes, certificated in any category, except Airbus Model A300–600 series airplanes.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and critical design configuration control limitations (CDCCLs). Compliance with the operator maintenance documents is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections and CDCCLs, the operator may not be able to accomplish the inspections and CDCCLs described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections and CDCCLs that will preserve the critical ignition source prevention feature of the affected fuel system.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Revise Airworthiness Limitations Section (ALS) To Incorporate Fuel Maintenance and Inspection Tasks

(f) Within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300 Fuel Airworthiness Limitations, Document 95A.1928/05, Issue 2, dated May 11, 2007 (approved by the European Aviation Safety Agency (EASA) on July 6, 2007), Section 1, ''Maintenance/Inspection Tasks.'' For all tasks identified in Section 1 of Document 95A.1928/05, the initial compliance times start from the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, and the repetitive inspections must be accomplished thereafter at the intervals specified in Section 1 of Document 95A.1928/05, except as provided by paragraph (g) of this AD.

(1) The effective date of this AD.

(2) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

Note 2: Airbus Operator Information Telex SE 999.0079/07, Revision 01, dated August 14, 2007, identifies the applicable sections of the Airbus A300 airplane maintenance manual necessary for accomplishing the tasks specified in Section 1 of Document 95A.1928/05.

Initial Compliance Time for Task 28–18–00–03–1

(g) For Task 28–18–00–03–1 identified in Section 1 of Document 95A.1928/05, ''Maintenance/Inspection Tasks,'' of Airbus A300 Fuel Airworthiness Limitations, Document 95A.1928/05, Issue 2, dated May 11, 2007 (approved by the EASA on July 6, 2007): The initial compliance time is the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD. Thereafter, Task 28–18–00–03–1 must be accomplished at the repetitive interval specified in Section 1 of Document 95A.1928/05.

(1) Prior to the accumulation of 40,000 total flight hours.

(2) Within 72 months or 20,000 flight hours after the effective date of this AD, whichever occurs first.

Revise ALS To Incorporate CDCCLs

(h) Within 12 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300 Fuel Airworthiness Limitations, Document 95A.1928/05, Issue 2, dated May 11, 2007 (approved by the EASA on July 6, 2007), Section 2, ''Critical Design Configuration Control Limitations.''

No Alternative Inspections, Inspection Intervals, or CDCCLs

(i) Except as provided by paragraph (j) of this AD: After accomplishing the actions specified in paragraphs (f) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(k) EASA airworthiness directive 2007–0094 R1, dated May 2, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus A300 Fuel Airworthiness Limitations, Document 95A.1928/05, Issue 2, dated May 11, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20820 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27560; Directorate Identifier 2006–NM–211–AD; Amendment 39–15198; AD 2007–19–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200PF, and –200CB series airplanes. This AD requires inspections to detect scribe lines and cracks of the fuselage skin, lap joints, circumferential butt splice strap, and external and internal approved repairs; and related investigative/corrective actions if necessary. This AD results from reports of scribe lines adjacent to the skin lap joints. We are issuing this AD to detect and correct cracks, which could grow and cause rapid decompression of the airplane.

DATES: This AD becomes effective November 28, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 28, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757–200, –200PF, and –200CB series airplanes. That NPRM was published in the **Federal Register** on March 15, 2007 (72 FR 12125). That NPRM proposed to require inspections to detect scribe lines and cracks of the fuselage skin, lap joints, circumferential butt splice strap, and external and internal approved repairs; and related investigative/corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

Boeing, Continental Airlines (CAL), and the National Transportation Safety Board (NTSB) support the NPRM.

Request To Extend Rulemaking to Additional Airplanes

The NTSB asserts that scribe lines could be present on virtually every pressurized airplane in service. The NTSB requests that we examine and expedite similar rulemaking for other makes and models of airplanes in addition to the Model 757 airplanes subject to the NPRM.

We acknowledge the NTSB's concerns. The unsafe condition identified in this action is a long-term durability issue that might not be limited to any particular airplane model. The potential consequences for each airplane model will vary with each model's design characteristics and operating conditions. To this end, we have coordinated efforts with other governing regulatory agencies and other manufacturers to investigate the existence of scribe lines on other airplanes and any potential safety risks associated with such scribe lines. As a result of these efforts, we might consider similar rulemaking on other airplanes.

Pending the inspection results provided in the reports required by this AD, we might consider further rulemaking to require inspections on Model 757–300 airplanes. And we are considering similar rulemaking for Boeing Model 747 airplanes. We have already issued an AD for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes (AD 2006–07–12, amendment 39–14539, 71 FR 16211, March 31, 2006).

Request To Revise Compliance Time

Continental Airlines (CAL) believes that the accomplishment timetables in Boeing Service Bulletin 757–53A0092, Revision 1, dated January 10, 2007, for approved repairs are overly conservative. CAL notes that scribe lines on flush repairs are not considered critical on Model 737 airplanes, and AD 2006–07–12 does not require similar inspections for those airplanes. CAL compares compliance times for initial scribe line inspections with those for approved repair inspections, and asserts that the proposed repair inspection would occur in a line environment without benefit of the support offered during a heavy maintenance check. CAL notes that no crack attributable to scribe lines has ever been found on the Model 757 fleet and that the Model 757 scribe line program is extrapolated from the Model 737 program; in the Model 737 scribe line inspection program all approved repair inspections generally coincide in accomplishment timeframe with the main scribe line program. Therefore CAL requests that we revise the accomplishment timetables of the approved repair section of the 757 scribe line program to better coincide with the mainline program.

We disagree with the request. The timetables, developed by Boeing in cooperation with the 757 Scribe Line Working Group, are based on extensive technical evaluation and analysis to reflect the differences in construction between the two models. In determining the appropriateness of the proposed compliance times, we considered the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods. We have determined that the compliance times, as proposed, will ensure an acceptable level of safety. We have not changed the final rule regarding this issue.

Request for Limited Return to Service (LRTS) Program for Zone C

Continental Airlines (CAL) notes that Table 5 (paragraph 1.E.) of the service bulletin specifies inspections for scribe lines on approved repairs in Zone C but provides no limited return to service (LRTS) program if scribe lines are found. CAL notes that these inspections will be required much earlier than other inspections in the program. Due to their urgent nature, these inspections will be required to be done in a line maintenance environment, instead of a longer span heavy check. CAL concludes that the lack of a readily

available approved LRTS for any scribe lines found during these inspections would have a significantly negative impact on its operation. CAL believes that typical scribe lines found on such repairs should have an approved LRTS for several reasons. No scribe lines on approved repairs have resulted in cracks on the Model 757 fleet. Approved repairs on Model 757 skins would by definition include enough static strength to contain the damage to the local area, as well as damage tolerance analysis as mandated by section 25.571 of the Federal Aviation Regulations (14 CFR 25.571). Even if analysis is not ready for such repairs, CAL suggests imposing the most conservative inspection interval of 250 flight cycles, as specified in the Model 737 LRTS program, so that an airline could continue its operation until a more permanent disposition can be approved by Boeing and the FAA.

We disagree. Providing repair instructions in the service bulletin for all possible repair conditions is not feasible. The LRTS program must be customized for individual repair configurations. For Zone C, the service bulletin specifies contacting Boeing for additional analysis and an LRTS program. We have not changed the final rule regarding this issue.

Request To Revise LRTS Inspection Interval

Because no cracking has been found on Model 757 airplanes, American Airlines requests that we relax the proposed interval for the LRTS inspections. First, the commenter requests that we revise the NPRM to allow operators to inspect at the next scheduled C-check (as an option to the proposed flight-cycle interval). Second, the commenter requests that subsequent inspections be done within an applicable flight-cycle interval, or at the next scheduled C-check after the last LRTS inspection. Third, the commenter requests that we extend the interval for an LRTS inspection, which includes the decal inspection area in Zone C, from 1,000 flight cycles, which the commenter finds overly frequent, to 1,500 flight cycles, which is in line with the other intervals for similar inspection areas.

We disagree with the requests. The intervals were developed by Boeing in conjunction with the Model 757 scribeline working group based on analysis and technical evaluations to reflect the Model 757's unique construction details and stresses. We have determined that the proposed compliance times represent the maximum intervals allowable for affected airplanes to continue to safely operate before the inspections are done. Since maintenance schedules vary among operators, there would be no assurance that the airplane would be inspected during the maximum interval if we were to allow operators the option of inspecting at the next C-check. We have not changed the final rule regarding this issue.

Request for Repair Instructions

Air Transport Association (ATA), on behalf of its member American Airlines, requests that repair instructions be included in the service bulletin because requiring FAA approval of each specific repair adds undue complexity and delay to the process.

We disagree. Each repair will likely be unique and tailored for specific conditions. It would be impossible to identify repairs that would adequately address all possible findings in all possible locations. We have not changed the final rule regarding this issue.

Request To Clarify Compliance Times

ATA, on behalf of American Airlines, considers the compliance time information specified in the NPRM vague and requests that we revise the NPRM to simply state that the compliance times specified in the service bulletin will be mandated by the AD.

We disagree with the need to clarify the compliance times in the NPRM. Paragraph 1.E. is the standard location of compliance time information in a service bulletin. The NPRM specified doing the actions ''within the applicable times specified in paragraph 1.E. of the service bulletin.'' The times specified in the service bulletin are clear and specific. We have not changed the final rule regarding this issue.

Request for Alternative Inspection Method: Zones A and B

Northwest Airlines (NWA) requests an alternative inspection method for the inspections specified in the NPRM for the lap joints and external repairs in Zones A and B. NWA's proposal would allow operators to do an ultrasonic phased-array inspection without stripping the paint from the affected locations, and eventually (before 50,000 total flight cycles or at the next scheduled fuselage paint removal, whichever occurs first) stripping the paint from affected locations and inspecting for scribe lines as specified in the service bulletin. (The ultrasonic phased-array inspection is described in the Boeing 757 NDT Manual, Part 4, Section 53–00–02.) NWA believes that its proposal would eliminate the need to strip the paint, and yet allow the detection of cracks before they reach an unacceptable length, thereby providing an acceptable level of safety. NWA adds that these procedures would delay the unsightly stripping of selected lap splice areas on an airplane until repainting the entire fuselage was necessary.

We disagree with the request. The fay surface sealant in the lap joints significantly attenuates the ultrasonic signal, and would affect the accuracy of the inspection results. This assessment has been coordinated with Boeing. Further, ultrasonic inspections can detect only cracks—not scribe lines. We have not changed the final rule regarding this issue. However, paragraph (j) of the final rule provides operators the opportunity to request an alternative method of compliance if the request includes data that prove that the new method would provide an acceptable level of safety.

Request for Alternative Inspection Method: Parts 9 and 10

Northwest Airlines (NWA) requests that we revise the proposed requirements for the scribe line inspection and LRTS program (Part 9 and Part 10, respectively, of the service bulletin). Part 9 and Part 10 specify surface high frequency eddy current (HFEC) inspections from the butt joint forward of the affected scribe line to the butt joint aft of the affected scribe line, using the Boeing 757 NDT, Part 6, 51–00–01 or 757 NDT, Part 6, 51–00–19 if the scribe line is greater than 0.063 inch from the lower edge of the upper skin. NWA reports that Boeing has indicated that the HFEC inspection procedure local to scribe lines greater than 0.063 inch from the lower edge of the upper skin would be structurally satisfactory if an ultrasonic inspection specified in the 757 NDT Manual, Part 4, 53–00–01 or 53–00–02 is accomplished from the butt joint forward of the affected scribe line to the butt joint aft of the affected scribe line. In addition, NWA understands that an AMOC to AD 2006–07–12 has been granted for Model 737 airplanes for a similar inspection technique. This process reduces the area required to be inspected using pencil probes and will reduce the time required for inspection. NWA requests that we revise the NPRM to include the alternative inspection instead of considering this option only through the AMOC process.

We partially agree with this request. While Model 737 airplanes use the ultrasonic inspection from the butt joint forward to the butt joint aft of the affected scribe line, and a HFEC inspection local to scribe lines greater than 0.063 inch from the lower edge of

the upper skin, this technique has not yet been confirmed to be acceptable for use on Model 757 airplanes. We are working with Boeing to determine if this inspection technique can be used on the Model 757 airplanes. If this technique is acceptable, a fleetwide AMOC might be issued to allow this technique. We have not changed the final rule regarding this issue.

Request for Provisions for Converted Airplanes

FedEx reports that it will convert about 90 passenger airplanes into special freighters. FedEx considers these airplanes, after conversion, to most closely resemble Group 6 airplanes, as that Group is defined in the service bulletin. FedEx requests that we revise the NPRM to do the following: Consider possible prorated compliance times; identify the appropriate Group for converted airplanes; omit the inspection area for decals forward of BS 661, where a new panel was installed during conversion; omit the inspection of the butt joint at BS 660; and define the areas, compliance times, and damage limits for the inspection of the upper skins for decals aft of BS 660. According to FedEx, providing these conditions in the AD instead of an AMOC would be more expeditious.

We disagree with the request. FedEx provided no details of the conversion modification, so we cannot evaluate the merits of the claim that these airplanes are similar to Group 6 airplanes. However, under the provisions of paragraph (j) of the final rule, we may approve requests for airplane group reassignments, if details of the modification are provided that would substantiate that reassigning these airplanes to Group 6 would be appropriate and provide an acceptable level of safety. We have not changed the final rule regarding this issue.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 945 airplanes of the affected design in the worldwide fleet; of these, about 634 are U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this AD. There are no U.S.-registered airplanes in Group 5 or Group 6.

ESTIMATED COSTS

Inspections	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Group 1	127	$80	$10,160	144	$1,463,040
Group 2	122	80	9,760	6	58,560
Group 3	154	80	12,320	75	924,000
Group 4	128	80	10,240	409	4,188,160

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–19–07 Boeing: Amendment 39–15198. Docket No. FAA–2007–27560; Directorate Identifier 2006–NM–211–AD.

Effective Date

(a) This AD becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes, certificated in any category; as identified in Boeing Service Bulletin 757–53A0092, Revision 1, dated January 10, 2007.

Unsafe Condition

(d) This AD results from reports of scribe lines adjacent to the fuselage skin lap joints. We are issuing this AD to detect and correct cracks, which could grow and cause rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections

(f) Perform detailed inspections to detect scribe lines and cracks of the fuselage skin, lap joints, circumferential butt splice strap, and external and internal approved repairs; and perform related investigative and corrective actions. Do the actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–53A0092, Revision 1, dated January 10, 2007, except as required by paragraph (g) of this AD. Do the actions within the applicable compliance times specified in paragraph 1.E. of the service bulletin, except as required by paragraph (h) of this AD.

Exceptions to Service Bulletin Specifications

(g) Where Boeing Service Bulletin 757–53A0092, Revision 1, dated January 10, 2007, specifies to contact Boeing for appropriate repair instructions, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Boeing Service Bulletin 757–53A0092, Revision 1, dated January 10, 2007, specifies compliance times relative to the date of issuance of the service bulletin; however, this AD requires compliance before the specified compliance time relative to the effective date of the AD.

Credit for Prior Accomplishment

(i) Inspections done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 757–53A0092, dated September 18, 2006, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin 757–53A0092, Revision 1, dated January 10, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20816 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA No. FAA–2007–27911; Airspace Docket No. 07–ANM–8]

Establishment of Class E Airspace; Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** August 30, 2007 (72 FR 50046), Airspace Docket No. 07–ANM–8, FAA Docket No. FAA–2007–27911. In that rule, an error was made in the legal description for Hailey, ID. Specifically, the longitude referencing Friedman Memorial Airport, ID stated ''* * *long. 114°17′45″ W.'' instead of ''* * *long.114°17′44″ W.'' This action corrects that error.

DATES: *Effective Date:* 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

History

On August 30, 2007, a final rule for Airspace Docket No. 07–ANM–8, FAA Docket No. FAA–2007–27911 was published in the **Federal Register** (72 FR 50046), establishing Class E airspace in Hailey, ID. The longitude referencing Friedman Memorial Airport, ID was incorrect in that the longitude stated ''* * *114°17′45″ W.'' instead of ''* * *long.114°17′44″ W.'' This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on August 30, 2007 (72 FR 50046), Airspace Docket No. 07–ANM–8, FAA Docket No. FAA–2007–27911, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Amended]

■ On page 50047, correct the legal description for Hailey, ID, to read as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID, E5 Hailey, ID [Corrected]

Friedman Memorial Airport, ID

(lat. 43°30′14″ N., long. 114°17′44″ W.)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Friedman Memorial Airport, and within 2 miles west and 5.5 miles east of the 328° bearing from the airport extending from the 5.5-mile radius to 10 miles northwest of the airport, and within 2 miles west and 4 miles east of the 159° bearing from the airport extending from the 5.5-mile radius to 15.5 miles southeast of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 44°00′00″ N., long. 114°55′00″ W., thence to lat. 44°00′00″ N., long. 113°53′00″ W., thence to lat. 43°00′00″ N., long. 113°49′00″ W., thence to lat. 43°00′00″ N., long. 114°55′00″ W., thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on October 5, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–20796 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 744

[Docket No. 071018609–7611–01]

RIN 0694–AE17

Burma: Revision of the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In response to the Government of Burma's continued repression of the democratic opposition in Burma, and consistent with Executive Order 13310 of July 28, 2003 and Executive Order 13448 of October 18, 2007, this final rule amends the Export Administration Regulations (EAR) to move Burma into more restrictive country groupings and impose a license requirement for exports, reexports or transfers of most items subject to the EAR to persons listed in or designated pursuant to Executive Orders 13310 and 13448.

DATES: *Effective Date:* This rule is effective October 24, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE17 (Burma), by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include ''RIN 0694-AE17 (Burma)'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE17 (Burma).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694-AE17 (Burma))—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Acting Director, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Telephone: (202) 482-4252, or E-mail: *jroberts@bis.doc.gov.*

SUPPLEMENTARY INFORMATION

Background

The United States enacted an arms embargo against Burma in 1993 (58 FR 33293). Additionally, in 2003, pursuant to Executive Order 13310 (July 28, 2003) and other relevant authorities, the U.S. imposed economic sanctions, including a ban on all imports from Burma, a ban on the export of financial services by U.S. persons to Burma, and an asset freeze on certain Burmese individuals and entities. Executive Order 13310 listed certain persons in its Annex and set forth criteria for designation of additional persons.

In response to the Government of Burma's continued repression of the democratic opposition in Burma, the President issued Executive Order (E.O.) 13448 of October 18, 2007, listing certain persons in the Annex as subject to sanctions administered by the Department of the Treasury, Office of Foreign Assets Control (OFAC) and setting forth criteria for designation of additional persons by OFAC. Consistent with Executive Orders 13310 and 13448, and the Trade Sanctions Reform and Export Enhancement Act (Title IX of Pub. L. 106–387), this final rule amends the EAR to impose a license requirement for exports, reexports or transfers of items subject to the EAR to persons listed in or designated pursuant to Executive Orders 13310 or 13448, except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to those orders. All persons listed in or designated pursuant these Executive Orders are identified with the reference [BURMA] on OFAC's list of Specially Designated Nationals and Blocked Persons set forth in Appendix A to 31 CFR Chapter V and on OFAC's Web site at *http://www.treas.gov/OFAC.* This rule creates a new § 744.22 to set forth this new license requirement.

Further, in part 740 of the EAR (License Exceptions), this rule moves Burma from Computer Tier 1 to Computer Tier 3, restricting access to high-performance computers and related technology and software under License Exception APP (Section 740.7). In Supplement No. 1 to part 740 (Country Groups), this rule moves Burma from Country Group B (countries raising few national security concerns) to Country Group D:1 (countries raising national security concerns), which further limits the number of license exceptions available for exports to Burma. Burma will remain in Country Group D:3 (countries raising proliferation concerns related to chemical and biological weapons).

Consistent with the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), a foreign policy report was submitted to Congress on October 19, 2007, notifying Congress of the imposition of foreign policy-based licensing requirements reflected in this rule.

Although the EAA expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46137 (Aug. 16, 2007)), has continued the EAR in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on November 23, 2007, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before December 10, 2007. Any such items not actually exported or reexported before midnight, on December 10, 2007, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866. U.S. trade with Burma is generally limited to non-strategic goods (e.g., biotechnology, electronic, and life sciences). In 2006, the value of trade between the two countries totaled $7.5 million. Since 1997, BIS has processed only 21 license applications, approving 14 valued at $3.31 million for exports primarily for items in the oil sector. The changes made by this rule primarily affect strategic items controlled for national security reasons, including high-performance computers. This

analysis demonstrates that this rule is not expected to impact significantly U.S. trade with Burma as a whole but is tailored to effectively prevent the benefit of trade to certain persons in Burma or related to the situation in Burma, as identified, in order to implement an important U.S. foreign policy objective.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, parts 740 and 744 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Section 740.7 is amended by:

■ a. Removing ''Burma'' from paragraph (c); and

■ b. Revising paragraph (d)(1) to read as follows:

§ 740.7 Computers (APP).

* * * * *

(d) *Computer Tier 3 destinations.* (1) *Eligible destinations.* Eligible destinations under paragraph (d) of this section are: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Burma, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Montenegro, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Serbia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

* * * * *

■ 3. Supplement No. 1 to part 740—Country Groups is amended by:

■ a. Removing the entry ''Burma'' from Country Group B; and

■ b. Adding an entry ''Burma'' to Country Group D to read as follows:

Supplement No. 1 to Part 740—Country Groups

* * * * *

COUNTRY GROUP D

Country	[D:1] National Security	[D:2] Nuclear	[D:3] Chemical & Biological	[D:4] Missile Technology
* * * * * * *				
Burma	X		X	
* * * * * * *				

PART 744—[AMENDED]

■ 4. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13310, 68 FR 44853, 3 CFR 2003 Comp., p. 241; E.O. 13448; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 5. A new § 744.22 is added to read as follows:

§ 744.22 Restrictions on Exports, Reexports and Transfers to Persons Listed in or Designated Pursuant to Executive Orders 13310 and 13448.

Consistent with Executive Order 13310 of July 28, 2003 and Executive

Order 13448 of October 18, 2007 (''Blocking Property and Prohibiting Certain Transactions Related to Burma''), BIS maintains restrictions on exports, reexports, and transfers to persons listed in or designated pursuant to Executive Orders 13310 and 13448. These persons include individuals and entities listed in the Annexes to Executive Orders 13310 or 13448, as well as other persons designated pursuant to criteria set forth in those orders.

(a) *License Requirements.* (1) A license requirement applies to the export, reexport, or transfer of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to Executive Orders 13310 and 13448) to—

(i) Persons listed in the Annexes to Executive Order 13310 of July 28, 2003 or Executive Order 13448 of October 18, 2007; or

(ii) Persons designated pursuant to Executive Order 13310 or Executive Order 13448.

Note to paragraph (a)(1): OFAC includes these persons with the reference [BURMA] on its list of Specially Designated Nationals and Blocked Persons set forth in Appendix A to 31 CFR Chapter V and on its Web site at *http://www.treas.gov/OFAC.*

(2) To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to Executive Orders 13310 and 13448) but not subject to regulations maintained by OFAC.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to Executive Orders 13310 and 13448).

(5) Any export, reexport, or transfer to a person identified in paragraph (a) of this section by a U.S. person of any item subject both to the EAR and regulations maintained by OFAC and not authorized by OFAC is a violation of the EAR.

(6) Any export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to Executive Orders 13310 and 13448) that is not subject to regulations maintained by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad, reexport, or transfer by a non-U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to Executive Orders 13310 and 13448) and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorizations are available for export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to Executive Orders 13310 and 13448).

(c) *Licensing policy.* Applications for licenses for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to Executive Orders 13310 and 13448) will generally be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section, except as available under 31 CFR 537.210(c).

Dated: October 18, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–20962 Filed 10–23–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9339]

RIN 1545–BG44

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9339) that were published in the **Federal Register** on Friday, September 14, 2007 (72 FR 52470) providing guidance to state and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds on the program requirements for qualified zone academy bonds.

DATES: The correction is effective October 24, 2007.

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones or Zoran Stojanovic, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9339) that are the subject of this correction are under section 1397E of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9339) contain an error that may prove to be misleading and are in need of clarification.

List of Subject in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1397E–1T is amended by revising paragraph (i)(6) to read as follows:

§ 1.1397E–1T Qualified zone academy bonds (temporary).

* * * * *

(i) * * *

(6) *Certain defeasance escrow earnings.* With respect to a defeasance escrow established in a remedial action for an issue of QZABs that meets the special rebate requirement under paragraph (h)(7)(ii)(C)(*2*) of this section, the QZAB issuer is treated as ineligible for the small issuer exception to arbitrage rebate under section 148(f)(4)(D) and paragraph (i)(5) of this section and compliance with that special rebate requirement is treated as satisfying applicable arbitrage investment restrictions under section 148 for that defeasance escrow.

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–20859 Filed 10–23–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

Outer Continental Shelf Air Regulations

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 53 to 59, revised as of July 1, 2007, in Appendix A to Part 55, on page 143, in the second column, above paragraph (b), the heading and paragraph (a) for California are reinstated to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(a) State requirements.

(1) The following requirements are contained in *State of California Requirements Applicable to OCS Sources*, February 2006:

Barclays California Code of Regulations

The following sections of Title 17 Subchapter 6:

17 § 92000—Definitions (Adopted 5/31/91)
17 § 92100—Scope and Policy (Adopted 5/31/91)
17 § 92200—Visible Emission Standards (Adopted 5/31/91)
17 § 92210—Nuisance Prohibition (Adopted 5/31/91)
17 § 92220—Compliance with Performance Standards (Adopted 5/31/91)
17 § 92400—Visible Evaluation Techniques (Adopted 5/31/91)
17 § 92500—General Provisions (Adopted 5/31/91)
17 § 92510—Pavement Marking (Adopted 5/31/91)
17 § 92520—Stucco and Concrete (Adopted 5/31/91)
17 § 92530—Certified Abrasive (Adopted 5/31/91)
17 § 92540—Stucco and Concrete (Adopted 5/31/91)
17 § 93115—Airborne Toxic Control Measure for Stationary Compression Ignition Engines (Adopted 2/26/04)

Health and Safety Code

The following section of Division 26, Part 4, Chapter 4, Article 1:

Health and Safety Code § 42301.13 of *seq.* Stationary sources: demolition or removal (chaptered 7/25/96)

* * * * *

[FR Doc. 07–55521 Filed 10–23–07; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 158 and 161

[EPA–HQ–OPP–2004–0387; FRL–8116–2]

Pesticides: Redesignation of part 158; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is redesignating certain pesticide data requirements currently located in 40 CFR part 158 into a new part 161. The data requirements being transferred apply to antimicrobial pesticides. EPA is also making conforming changes and cross-reference revisions to the newly redesignated material. The redesignation is intended to preserve regulatory data requirements for antimicrobial pesticides, while preparing for the promulgation of final rules pertaining to data requirements for conventional pesticides, biochemical, and microbial pesticides.

DATES: This final rule is effective December 24, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0387. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Public Docket, in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jean Frane, Field and External Affairs Division 7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: (703) 305-5944; e-mail address: *frane.jean@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a producer or registrant of an antimicrobial pesticide product, including wood preservatives and antifouling products. This action may also affect any person or company who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or any person or company who is interested in obtaining or retaining a tolerance in the absence of a registration, that is, an import tolerance. Potentially affected entities may include, but are not limited to:

- Producers of cleaning preparations that include an antimicrobial pesticide (NAICS code 3256).
- Pesticide manufacturers or formulators of paints or coatings that contain an antimicrobial pesticide (NAICS code 32551).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) code has been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Does this Redesignation Do?

In the **Federal Register** of March 11, 2005 (70 FR 12276), EPA issued a proposed rule to revise its pesticide data requirements for conventional pesticides. Those data requirements, currently located in 40 CFR part 158, cover all pesticides. EPA's purpose in developing data requirements devoted to conventional pesticides (and subsequently for biochemical and microbial pesticides) was to tailor data requirements for different types of pesticides to make them more transparent and flexible. As part of that effort, EPA intends in the future to issue a proposed rule updating data requirements for antimicrobial pesticides, including wood preservatives and antifoulants.

EPA is shortly issuing final rules for conventional pesticides, biochemical and microbial pesticides. Those rules would supersede current part 158 data requirements in their entirety. Unless EPA acts to preserve the data requirements applicable to antimicrobial pesticides, the promulgation of the final rules would eliminate any regulatory data requirements for antimicrobial pesticides.

Accordingly, EPA is issuing a final rule that would preserve the current data requirements for antimicrobial pesticides until such time as a final rule can be promulgated and made effective.

To accomplish this, EPA is moving those portions of current part 158 that apply to antimicrobial pesticides into new part 161, and making technical corrections to accommodate the change. Specifically, the following changes are being made:

1. EPA is removing sections of part 158 that relate only to biochemical and microbial pesticides, including §§ 158.65, 158.690 and 158.740. These sections had, and would not have, any bearing on antimicrobial data requirements.

2. EPA is also removing § 158.50 pertaining to the formulators' exemption because this material will be consolidated in § 152.85 when final rules for conventional pesticides and biochemical and microbial pesticides are promulgated.

3. EPA is making internal cross-reference changes from ''158'' to ''161'' throughout the redesignated material.

4. In new § 161.108, EPA has updated the Guidelines information to reflect the current order numbers from the National Technical Information Service.

III. Why is this Redesignation Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment, because EPA is acting to preserve existing data requirements that would otherwise be removed from the Code of Federal Regulations by promulgation of an impending final rule. Redesignating the material in advance of promulgation will also avoid potential errors in accomplishing a complex transition in the Code of Federal Regulations. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This rule redesignates, makes technical changes and cross-reference corrections in the EPA regulations governing pesticides. The amendments are administrative in nature. Other than making EPA regulations clearer and more transparent, these amendments are not expected to have any impact on regulated parties or the public.

Accordingly, these amendments are not subject to review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), as a significant regulatory action. Because the Agency has made a ''good cause''finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute. this rule has been exempted from review under Executive Order 12866. Moreover, for the same reason, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since, as detailed above, these amendments will have no detrimental impact on regulated parties or the public, EPA certifies under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) that the amendments will not have a significant impact on a substantial number of small entities.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule is directed at pesticide manufacturers and others who seek to register, amend or maintain a registration or to establish, modify, or revoke a pesticide tolerances or exemptions, not States. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive

Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 158

Environmental protection, Confidential business information, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

40 CFR Part 161

Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements

Dated: October 11, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances.

PART 158—[AMENDED]

■ 1. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136 - 136y.

§§ 158.50, 158.65, 158.690 and 158.740 [Removed]

■ 2. Sections 158.50, 158.65, 158.690, and 158.740 are removed.

PART 158—[REDESIGNATED AS PART 161 AND AMENDED]

■ 3. The remainder of part 158, consisting of subparts A, B, C, and D are redesginated as part 161, subparts A, B, C, and D as shown in the Redesignation table below:

Old part, subpart or section	New part, subpart or section
Part 158--Data Requirements for Registration	Part 161--Data Requirements for Registration of Antimircobial Pesticides
Subpart A	Subpart A
158.20	161.20
158.25	161.25
158.30	161.30
158.32	161.32
158.33	161.33
158.34	161.34
158.35	161.35
158.40	161.40
158.45	161.45
158.55	161.55
158.60	161.60
158.70	161.70
158.75	161.75
158.80	161.80
158.85	161.85
Subpart B	Subpart B
158.100	161.100
158.101	161.101

Old part, subpart or section	New part, subpart or section
158.102	161.102
158.108	161.108
Subpart C	Subpart C
158.150	161.150
158.153	161.153
158.155	161.155
158.160	161.160
158.162	161.162
158.165	161.165
158.167	161.167
158.170	161.170
158.175	161.175
158.180	161.180
158.190	161.190
Subpart D	Subpart D
158.202	161.202
158.240	161.240
158.290	161.290
158.340	161.340
158.390	161.390
158.440	161.440
158.490	161.490
158.540	161.540
158.590	161.590
158.640	161.640
Appendix A To Part 158--Data Requirements For Registration: Use Pattern Index	Appendix A To Part 161--Data Requirements For Registration: Use Pattern Index

§ 161.25 [Amended]

■ 4. In newly redesignated § 161.25, references to ''§ 158.35,'' ''§ 158.40,'' ''§ 158.45,'' ''§ 158.60,'' ''§ 158.100'' and ''§ 158.101'' are revised to read ''§ 161.35,'' ''§ 161.40,'' ''§ 161.45,'' ''§ 161.60,'' ''§ 161.100,'' and ''§ 161.101,'' respectively, wherever they occur.

§ 161.30 [Amended]

■ 5. In newly redesignated § 161.30, references to ''part 158,'' ''§ 158.75,'' and ''§ 158.160'' are revised to read ''part 161,'' ''§ 161.75,'' and ''§ 161.160,'' respectively, wherever they occur.

§ 161.32 [Amended]

■ 6. In newly redesignated § 161.32, references to ''§ 158.33,'' and ''§ 158.34(b)'' are revised to read ''§ 161.33,'' and ''§ 161.34(b),'' respectively, wherever they occur.

§ 161.34 [Amended]

■ 7. In newly redesignated § 161.34, in paragraph (b), the reference to ''§ 158.34(c)'' is revised to read ''paragraph (c) of this section'' and in paragraphs (c)(1) and (c)(2) the reference to ''40 CFR 158.34'' is revised to read to read ''40 CFR 161.34,''.

§ 161.35 [Amended]

■ 8. In newly redesignated § 161.35, references to ''§ 158.20(b),'' ''§ 158.40,'' ''§ 158.45,'' ''§ 158.60,'' ''§ 158.75'' and ''§ 158.80'' are revised to read ''§ 161.20(b),'' ''§ 161.40,'' ''§ 161.45,'' ''§ 161.60,'' ''§ 161.75,'' and ''§ 161.80,'' respectively.

§ 161.70 [Amended]

■ 9. In newly redesignated § 161.70, reference to ''§ 158.20(d)'' is revised to read ''§ 161.20(d).''

§ 161.75 [Amended]

■ 10. In newly redesignated § 161.75(a), reference to ''part 158'' is revised to read ''part 161''.

§ 161.100 [Amended]

■ 11. In newly redesignated § 161.100, reference to''§§ 158.150 through 158.740'', is revised to read ''§§ 161.150 through 161.640'' and the reference to ''§ 158.108'' is revised to read ''§ 161.108''.

§ 161.101 [Amended]

■ 12. In newly redesignated § 161.101, reference to ''§ 158.45'' is revised to read ''§ 161.45,'' wherever it occurs.

■ 13. Newly redesignated § 161.108 is revised to read as follows:

§ 161.108 Relationship of Pesticide Assessment Guidelines to data requirements.

The Pesticide Assessment Guidelines contain the standards for conducting acceptable tests, guidance on evaluation and reporting of data, definition of terms, further guidance on when data are required, and examples of acceptable protocols. They are available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703–605–6000). The following Subdivisions of the Pesticide Assessment Guidelines, referenced to the appropriate sections of this part, are currently available:

Subdivision	Title	NTIS order no.	Corresponding section(s) in this part
D	Product Chemistry	PB83–153890	161.150 – 161.190
E	Hazard Evaluation: Wildlife and Aquatic Organisms	PB83–153908	161.490
F	Hazard Evaluation: Humans and Domestic Animals	PB83–153916	161.340
G	Product Performance	PB83–153924	161.640
I	Experimental Use Permits	PB83–153932	161.20 – 161.640
J	Hazard Evaluation: Nontarget Plants	PB83–153940	161.540
K	Reentry Protection	PB85–120962	161.390
L	Hazard Evaulation: Nontarget Insect	PB83–153957	161.590
N	Environmental Fate	PB83–153973	161.290
O	Residue Chemistry	PB83–153961	161.240
R	Spray Drift Evaluation	PB84–189216	161.440

§ 161.150 [Amended]

■ 14. In newly redesignated § 161.150, references to ''§§ 158.175,'' and ''§ 158.155,'' are revised to read ''§ 161.175'' and ''§ 161.155,'' respectively, wherever they occur.

§ 161.155 [Amended]

■ 15. In newly redesignated § 161.155, reference to ''§ 158.175'' is revised to read ''§ 161.175,'' whereever it occurs.

§ 161.162 [Amended]

■ 16. In newly redesignated § 161.162, reference to ''§ 158.165'' is revised to read ''§ 161.165.''

§ 161.165 [Amended]

■ 17. In newly redesignated § 161.165, reference to ''§ 158.162'' is revised to read ''§ 161.162'', whereever it occurs.

§§ 161.190, 161.240, 161.290, 161.340, 161.390, 161.440, 161.490, 161.540, 161.590, and 161.640 [Amended]

■ 18. In newly redesignated §§ 161.190, 161.240, 161.290, 161.340, 161.390, 161.440, 161.490, 161.540, 161.590, and 161.640, reference to the phrase ''Sections 158.50 and 158.100 through 158.102'' is revised to read ''Sections 161.100 through 161.102''.

§ 161.340 [Amended]

■ 19. Newly redesignated § 161.340 is further amended in paragraph (b)(22)(i) by revising the reference to ''§ 158.202'' to read ''§ 161.202.''

Appendix A [Amended]

■ 20. Appendix A to newly redesignated part 161 is amended under the topic ''How to use this Index,'' in paragraph 4, by revising the phrase ''in §§ 158.120 through 153.170'' to read ''in §§ 161.155 through 161.640''.

[FR Doc. E7–20836 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0234; FRL–8152–4]

Fluazinam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluazinam in or on aronia berry; buffalo currant; bushberry subgroup 13B; Chilean guava; European barberry; ginseng; highbush cranberry; honeysuckle, edible; jostaberry; juneberry; lingonberry; native currant; pea and bean, dried shelled, except soybean, subgroup 6C, except pea; pea and bean, succulent shelled, subgroup 6B, except pea; salal; sea buckthorn; turnip, greens; vegetable, Brassica leafy, group 5; and vegetable, legume, edible-podded, subgroup 6A, except pea. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 24, 2007. Objections and requests for hearings must be received on or before December 24, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0234. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow

the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0234 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before December 24, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0234, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 30, 2007 (72 FR 21261-21263) (FRL–8124–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 6E7137 and 6E7139) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W, Princeton, New Jersey, 08540. PP 6E7137 requested that 40 CFR 180.574 be amended by establishing tolerances for residues of the fungicide fluazinam in or on Vegetable, legume, edible podded, subgroup 6A, except pea at 0.15 parts per million (ppm); Brassica, leafy greens, subgroup 5B at 0.02 ppm; Brassica, head and stem, subgroup 5A at 0.01 ppm; and turnip, tops at 0.02 ppm; and residues of fluazinam and its metabolite AMGT in or on Bushberry subgroup 13B; berry, aronia; blueberry, lowbush; currant, buffalo; guava, chilean; barberry, European; cranberry, highbush; honeysuckle; jostaberry; Juneberry; lingonberry; currant, native; salal; and buckthorn, sea at 4.5 ppm. PP 6E7139 requested that 40 CFR 180.574 be amended by establishing tolerances for residues of fluazinam in or on ginseng at 3.0 ppm; bean, dry at 0.01 ppm; and pea and bean, succulent shelled, subgroup 6B, except pea at 0.02 ppm. That notice referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified commodity terms and/or tolerance levels for most commodities. EPA has also determined that the tolerances for berries should include parent fluazinam only. The reasons for these changes are explained in Unit V.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of fluazinam on Aronia berry at 7.0 ppm; buffalo currant at 7.0 ppm; bushberry subgroup 13B at 7.0 ppm; Chilean guava at 7.0 ppm; European barberry at 7.0 ppm; ginseng at 4.5 ppm; highbush cranberry at 7.0 ppm; honeysuckle, edible at 7.0 ppm; jostaberry at 7.0 ppm; juneberry at 7.0 ppm; lingonberry at 7.0 ppm; native currant at 7.0 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except pea at 0.02 ppm; pea and bean, succulent shelled, subgroup 6B, except pea at 0.04 ppm; salal at 7.0 ppm; sea buckthorn at 7.0 ppm; turnip, greens at 0.01 ppm; vegetable, *Brassica* leafy, group 5 at 0.01 ppm; and vegetable, legume, edible-podded, subgroup 6A, except pea at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by fluazinam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Fluazinam: Human Health Risk Assessment for Proposed Use on Edible-Podded Beans, Shelled Succulent and Dried Beans, Brassica Leafy Vegetables, Bushberries, and Ginseng''. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2007–0234–0003 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fluazinam used for human risk assessment can be found at *http://www.regulations.gov* in document ''Fluazinam: Human Health Risk Assessment for Proposed Use on Edible-Podded Beans, Shelled Succulent and Dried Beans, Brassica Leafy Vegetables, Bushberries, and Ginseng'' at pages 25-26 in docket ID number EPA–HQ–OPP–2007–0234.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fluazinam, EPA considered exposure under the petitioned-for tolerances as well as all existing fluazinam tolerances in 40 CFR 180.574. EPA also considered exposure to residues of the metabolite AMGT, which has been identified as a metabolite of toxicological concern in all crops except peanuts, root and tuber vegetables and bulb vegetables. EPA assessed dietary exposures from fluazinam and AMGT in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues of fluazinam. AMGT residues were calculated based on the mean ratio of metabolite to parent seen in field trials. For crops where this information was not available (Brassica and legume vegetables), a conservative, upper-bound ratio derived from metabolism studies was used to estimate AMGT residues.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues of fluazinam. AMGT residues were calculated as described for the acute dietary exposure assessment.

iii. *Cancer*. In accordance with the 2005 Guidelines for Carcinogen Risk Assessment, for fluazinam there is ''Suggestive evidence of carcinogenic potential.'' This determination is based on weight of evidence considerations where a concern for potential carcinogenic effects in humans is raised, but the animal data are judged not sufficient for a stronger conclusion.

Carcinogenicity studies were conducted in rats and mice. In rats, increased incidences of thyroid gland follicular cell tumors were seen in males

but not in females. In mice, there were conflicting results with regard to hepatocarcinogenicity. In one study benign and malignant liver tumors were seen in males; no liver tumors were seen in females. In the second study, carcinogenic response was equivocal and tumors did not occur in a dose-related manner. In males, the dose that induced liver tumors in the first study failed to induce liver tumors in the same strain of mice in the second study. In the second study, in females, liver tumors were seen only at an excessive toxic dose. There was no evidence of mutagenicity either in *in vivo* or *in vitro* assays. No chemicals structurally related to fluazinam were identified as carcinogens.

Since the evidence for carcinogenicity is not sufficient to indicate anything greater than a suggestion of a carcinogenic potential, EPA concludes that quantification of cancer risk would not be scientifically appropriate, as it attaches greater significance to the positive cancer findings than the entire dataset warrants. Further, due to the equivocal and inconsistent nature of the cancer response in the rat and mouse studies (in rats, effects seen only in males; in mice, one study showed effects only in males but even these effects were not reproducible), EPA finds that when judged qualitatively the data indicate no greater than a negligible risk of cancer. Additionally, it is noted that the point of departure (1.1 milligrams/kilograms/day) (mg/kg/day)) selected for deriving the chronic reference dose will adequately account for all chronic effects determined to result from exposure to fluazinam in chronic animal studies, including the equivocal cancer effects.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for fluazinum. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for fluazinam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of fluazinam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of fluazinam for acute exposures are estimated to be 71.0 parts per billion (ppb) for surface water and 0.187 ppb for ground water. The EECs for chronic exposures are estimated to be 17.7 ppb for surface water and 0.187 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 71.0 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 17.7 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluazinam is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluazinam and any other substances and fluazinam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluazinam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1.*In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for fluazinam includes rat and rabbit developmental toxicity studies, a developmental neurotoxicity study in rats and a 2–generation reproduction toxicity study in rats.

There was no evidence of increased qualitative or quantitative susceptibility of fetuses following *in utero* exposure to fluazinam in the rabbit developmental study and no evidence of increased susceptibility of offspring in the 2–generation reproduction study in rats. However, there was evidence of increased qualitative susceptibility of fetuses to fluazinam in the developmental toxicity study in rats. In this study, increased incidences of facial/palate clefts and other rare deformities in the fetuses were observed in the presence of minimal maternal toxicity. In a developmental neurotoxicity study, decreases in body weight and body weight gain and a delay in completion of balano-preputial separation were observed in pups. These effects were seen in the absence of maternal effects, suggesting increased quantitative susceptibility of the offspring.

Although there is qualitative evidence of increased susceptibility in young in the developmental toxicity study in rats, there are no residual uncertainties with regard to prenatal and/or postnatal toxicity following *in utero* exposure of rats or rabbits. Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for fluazinam, the degree of concern for the effects observed in the study is low. There is a clear NOAEL for the fetal effects seen, the effects occurred in the presence of maternal toxicity, and they were only seen at the highest dose tested. Additionally, the NOAEL of 50 mg/kg/day identified in this developmental toxicity study in rats is significantly higher than the NOAEL used (7 mg/kg/day) to establish the acute Reference Dose (aRfD) of 0.07 mg/kg/day (females 13-49); thus, the aRfD is

protective of any potential developmental effects.

Quantitative evidence of increased susceptibility was also observed in a developmental neurotoxicity study in rats. In pups, there were decreases in body weight and body weight gain during lactation, and delayed preputial separation observed at 10 mg/kg/day (NOAEL=2 mg/kg/day). Although the NOAEL of 2 mg/kg/day is lower than that used for the acute RfD for females 13-49 (7 mg/kg/day), the effects noted in the developmental neurotoxicity study are attributable to multiple doses and are considered postnatal effects. Therefore, the study endpoint is not appropriate either for acute dietary exposures or for use with the population subgroup females 13-49 (with this subgroup the concern is for prenatal exposures). The chronic RfD of 0.011 mg/kg/day is based on a lower NOAEL of 1.1 mg/kg/day and is considered protective of potential developmental effects.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for fluazinam is complete in regard to pre-and postnatal toxicity and neurotoxicity.

ii. A developmental neurotoxicity study (DNT) in rats was submitted to address the presence of neurotoxic lesions observed after fluazinam exposure in sub-chronic and chronic toxicity studies and to address the qualitative susceptibility seen in the rat developmental toxicity study. In the DNT study, there were no neurotoxic effects observed in either dams or pups. However, there was evidence of quantitative susceptibility for other effects in the DNT study, based on decreases in body weight and body weight gain, and delayed preputial separation in pups in the absence of maternal toxicity. There are no residual uncertainties for these effects, and toxicity endpoints and traditional UFs to be used in the risk assessment will be protective of these potential developmental effects.

iii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental study in rats, the risk assessment team did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of fluazinam. The degree of concern for prenatal and/or postnatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. Conservative ground and surface water modeling estimates were used. These assessments will not underestimate the exposure and risks posed by fluazinam.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, EPA performed two different acute risk assessments – one focusing on females 13 to 49 years old and designed to protect against prenatal effects and the other focusing on acute effects relevant to all other population groups. The more sensitive acute endpoint was seen as to prenatal effects rather than other acute effects. For females 13 to 49 years old, the acute dietary exposure from food and water will occupy 8% of the aPAD addressing prenatal effects. As to acute effects other than prenatal effects, the acute dietary exposure from food and water to fluazinam will occupy 3% of the aPAD for infants less than 1–year old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluazinam from food and water will utilize 16% of the cPAD for infants less than 1–year old, the population group with the greatest estimated exposure. There are no residential uses for fluazinam that result in chronic residential exposure to fluazinam.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluazinam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluazinam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The Agency has determined that quantification of human cancer risk is not necessary for fluazinam and that the chronic risk assessment based on the established cPAD is protective of potential cancer effects. Based on the results of the chronic risk assessment discussed above in Unit III.E.2, EPA concludes that fluazinam is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluazinam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with electron-capture detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex MRLs for residues of fluazinam in plant or animal commodities.

V. Conclusion

Based upon review of the data supporting the petition, EPA has modified the proposed tolerances as follows:

• The tolerances for Bushberry subgroup 13B and related berries were increased from 4.5 ppm to 7.0 ppm based on analyses of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data. Although IR-4 proposed tolerances for combined residues of fluazinam and AMGT on these commodities, EPA determined, based on the low levels of AMGT seen in the field trials, that only parent fluazinam should be included in the tolerance expression.

• The commodity terms for dry beans and succulent shelled legumes were

revised to read ''Pea and bean, dried shelled, except soybean, subgroup 6C, except pea'' and ''Pea and bean, succulent shelled, subgroup 6B, except pea'' to agree with recommended commodity terms in the Office of Pesticide Program's Food and Feed Commodity Vocabulary. Tolerances for these commodities were increased from 0.01 ppm to 0.02 ppm (dried) and from 0.02 ppm to 0.04 ppm (succulent) to account for the 50% dissipation of residues observed in the storage stability study.

• The commodity term for edible-podded legume vegetables was revised to read ''Vegetable, legume, edible-podded, subgroup 6A, except pea'' to agree with the Food and Feed Commodity Vocabulary. The tolerance level was decreased from 0.15 ppm to 0.10 ppm based on maximum residues seen in the field trials, since 80% of the residues were non-detectable and, therefore, not appropriate for analysis using the Tolerance Spreadsheet.

• IR-4 proposed separate tolerances of 0.02 ppm and 0.01 ppm for ''Leafy Brassica greens subgroup'' and ''Head and stem Brassica subgroup'', respectively. EPA determined that a single tolerance of 0.01 ppm covering the entire crop group ''Vegetable, Brassica leafy, group 5'' would be appropriate, based on the results of field trials showing no residues above the method limit of quantitation (LOQ) in any of the representative commodities (broccoli, cabbage and mustard greens). The tolerance for turnip greens was revised from 0.02 to 0.01 ppm on the same basis.

• The tolerance for ginseng was increased from 3.00 ppm to 4.5 ppm to account for dissipation of residues observed in the storage stability study.

Therefore, tolerances are established for residues of fluazinam, 3-chloro-N-[3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl]-5-(trifluoromethyl)-2-pyridinamine, in or on Aronia berry at 7.0 ppm; buffalo currant at 7.0 ppm; bushberry subgroup 13B at 7.0 ppm; Chilean guava at 7.0 ppm; European barberry at 7.0 ppm; ginseng at 4.5 ppm; highbush cranberry at 7.0 ppm; honeysuckle, edible at 7.0 ppm; jostaberry at 7.0 ppm; juneberry at 7.0 ppm; lingonberry at 7.0 ppm; native currant at 7.0 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except pea at 0.02 ppm; pea and bean, succulent shelled, subgroup 6B, except pea at 0.04 ppm; salal at 7.0 ppm; sea buckthorn at 7.0 ppm; turnip, greens at 0.01 ppm; vegetable, *Brassica* leafy, group 5 at 0.01 ppm; and vegetable, legume, edible-podded, subgroup 6A, except pea at 0.10 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 11, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.574 is amended by removing the heading *General* from paragraph (a)(1) and adding *General* to paragraph (a) and by alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.574 Fluazinam; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Aronia berry	7.0
Buffalo currant	7.0
Bushberry subgroup 13B	7.0
Chilean guava	7.0
European barberry	7.0
Ginseng	4.5
Highbush cranberry	7.0

Commodity	Parts per million
Honeysuckle, edible	7.0
Jostaberry	7.0
Juneberry	7.0
Lingonberry	7.0
Native currant	7.0
Pea and bean, dried shelled, except soybean, subgroup 6C, except pea	0.02
Pea and bean, succulent shelled, subgroup 6B, except pea	0.04
* * * * *	
Salal	7.0
Sea buckthorn	7.0
Turnip, greens	0.01
Vegetable, Brassica leafy, group 5	0.01
Vegetable, legume, edible-podded, subgroup 6A, except pea	0.10

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[FR Doc. E7–20581 Filed 10–23–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0471; FRL–8151–5]

Bifenthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of bifenthrin in or on mayhaw; vegetable, root, subgroup 1B except sugar beet and garden beet; beet, garden, roots; beet, garden, tops; radish, tops; soybean, seed; soybean, hulls; soybean, refined oil; groundcherry; pepino; peanut; pistachio; and grain, aspirated fractions. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 24, 2007. Objections and requests for hearings must be received on or before December 24, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0471. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

• Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0471 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before December 24, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0471, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental

Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of August 1, 2007 (72 FR 42074) (FRL–8140–4), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP) (6E7125, 6E7126, 6E7127, and 6E7128) by IR–4, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petitions requested that 40 CFR 180.442 be amended by establishing tolerances for residues of the insecticide bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on pistachio at 0.05 parts per million (ppm) (PP 6E7127); mayhaw at 1.4 ppm (PP 6E7125); vegetables, fruiting, group 8 at 0.5 ppm (PP 6E7128); peanut at 0.05 ppm (PP 6E7127); soybean, seed at 0.2 ppm (PP 6E7128); vegetable, root, except sugar beet and garden beet, subgroup 1B at 0.07 ppm (PP 6E7126); beet, garden, roots at 0.45 ppm (PP 6E7126); and beet, garden, tops at 15 ppm (PP 6E7126). That notice referenced a summary of the petition prepared by FMC Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised commodity definitions and/or tolerances for vegetable, root, except sugar beet and garden beet, subgroup 1B; soybean, hulls; soybean, refined oil; and vegetable, fruiting, group 8. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of the FFDCA, and the factors specified in section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of bifenthrin on mayhaw at 1.4 ppm; vegetable, root, subgroup 1B except sugar beet and garden beet at 0.10 ppm; beet, garden, roots at 0.45 ppm; beet, garden, tops at 15 ppm; radish, tops at 4.5 ppm; soybean, seed at 0.2 ppm; soybean, hulls at 0.50 ppm; soybean, refined oil at 0.30 ppm; groundcherry at 0.5 ppm; pepino at 0.5 ppm; peanut at 0.05 ppm; pistachio at 0.05 ppm; and grain, aspirated fractions at 70 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by bifenthrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced studies are available in the Bifenthrin Human Health Risk Assessment on pages 52–54 in docket ID number EPA–HQ–OPP–2007–0471.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day–26/p30948.htm*.

A summary of the toxicological endpoints for bifenthrin used for human risk assessment can be found at *http://www.regulations.gov* in the Bifenthrin Human Health Risk Assessment on pages 27–28 in docket ID number EPA–HQ–OPP–2007–0471.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to bifenthrin, EPA considered exposure under the petitioned-for tolerances as well as all existing bifenthrin tolerances in (40 CFR 180.442). EPA assessed dietary exposures from bifenthrin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a Tier 3, acute probabilistic dietary exposure and risk assessment for all supported (and pending) food uses. Anticipated residues (ARs) were developed based on the latest USDA's Pesticide Data Program (PDP) monitoring data 1998–2005, Food and Drug Administration (FDA) data, or field trial data for bifenthrin. ARs were further refined using percent crop treated (%CT) data and processing factors where appropriate.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, a refined chronic dietary exposure assessment was conducted for all the supported (and pending) food uses of bifenthrin using single point estimates of anticipated bifenthrin residues field trials. ARs were further refined using %CT data for some food commodities.

iii. *Cancer*. Bifenthrin was classified as a group ''C'' (possible human carcinogen). The Agency concluded that the chronic risk and exposure assessment, making use of the cPAD, to be protective of any potential carcinogenic risk. Therefore, no separate exposure assessment was conducted pertaining to cancer risk.

iv. *Anticipated residue and %CT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) of the FFDCA require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by section 408(b)(2)(E) of the FFDCA and authorized under section 408(f)(1) of the FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance. Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

a. The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

b. The exposure estimate does not underestimate exposure for any significant subpopulation group.

c. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information for chronic dietary exposures as follows: Raspberries 70%; honeydew melon 55%; hops 35%; Brussel sprouts 1%; blackberries 20%; cantaloupes 20%; sweet corn 20%; cabbage 15%; artichokes 10%; broccoli 1%; cauliflower 5%; corn 1%; cucumbers 5%; grapes 1%; citrus 1%; lettuce 1%; peas, green 5%; pears 1%; peppers 5%; pumpkins 15%; spinach 1%; tomatoes 5%; watermelons 5%; tree nuts 1%; squash 5%; beans, green 30%; strawberries 15%; cotton 1%; and lettuce 1% EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of 5% except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent six years.

The Agency believes that the conditions listed in Unit III.C.1.iv.a., b., and c.; have been met. With respect to Condition a., PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b. and c., regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenthrin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for bifenthrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of bifenthrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

The environmental fate database for bifenthrin is considered adequate for the characterization of drinking water exposure. The submitted data indicate that bifenthrin is relatively persistent under both laboratory and field conditions. Bifenthrin is relatively immobile in four soils tested. Due to its low mobility, bifenthrin is not likely to reach subsurface soil environments (lower microbial activity) or ground waters. Various terrestrial field dissipation studies confirm that bifenthrin remains mostly in the upper soil level. Due to its low solubility and high level of binding it appears that bifenthrin would remain bound to the soils during run-off events and it may reach surface waters if the run-off event is accompanied by erosion.The drinking water estimates are based on an application to lettuce at the highest application rate.

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI–GROW) models, the estimated environmental concentrations (EECs) of bifenthrin for acute and chronic exposures are estimated to be 0.0140 parts per billion (ppb) for surface water. The EECs for acute and chronic exposures are estimated to be 0.003 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessments, the water concentration value of 0.0140 ppb (lettuce-highest application rate (0.5 lb ai/A/season) was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Bifenthrin is currently registered for the following residential non-dietary sites: Indoor and outdoor residential non-dietary sites. Adults are potentially exposed to bifenthrin residues during residential application of bifenthrin. Adults and children are potentially exposed to bifenthrin residues after application (post-application) of bifenthrin products in residential settings. Exposure estimates were generated for residential handlers and individuals potential post-application contact with lawn, soil, and treated indoor surfaces using the EPA's Draft Standard Operating Procedures (SOPs) for Residential Exposure Assessment, and dissipation data from a turf transferable residue (TTR) study. These estimates are considered conservative, but appropriate, since the study data were generated at maximum application rates. Short- to intermediate-term dermal and inhalation exposures may occur for residential handlers of bifenthrin products. Although residential handler risks from inhalation exposures to bifenthrin vapor are considered unlikely since the vapor pressure of bifenthrin is low, inhalation exposure was assessed during residential mixing, loading, and application of granular products. Adults and children may be potentially exposed to bifenthrin residues after application of bifenthrin products in residential settings. Short-term and intermediate-term post-application dermal exposures for adults, and short-term and intermediate-term post-application dermal and incidental oral exposures for children are anticipated. Exposure estimates were generated for potential contact with lawn, soil, and treated indoor surfaces.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Bifenthrin is a member of the pyrethroid class of pesticides. EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, available data show that there are multiple types of sodium channels and it is currently unknown whether the pyrethroids as a class have similar effects on all channels or whether modifications of different types of sodium channels would have a cumulative effect, nor do we have a clear understanding of effects on key downstream neuronal function, e.g., nerve excitability, or how these key events interact to produce their compound specific patterns of neurotoxicity. Without such understanding, there is no basis to make a common mechanism of toxicity finding. There is ongoing research by the EPA's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. This research is expected to be completed by 2007. When available, the Agency will consider this research and make a determination of common mechanism as a basis for assessing cumulative risk. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. EPA concluded there is not a concern for prenatal and/or postnatal toxicity resulting from exposure to bifenthrin. There was no quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure to bifenthrin in developmental toxicity studies and no quantitative or qualitative evidence of increased susceptibility of neonates (as compared to adults) to bifenthrin in a 2–generation reproduction study in rats. Further, there was no quantitative or qualitative evidence of increased susceptibility of neonates (as compared to adults) to bifenthrin in a developmental neurotoxicity study. There are no concerns or residual uncertainties for prenatal and/ or postnatal toxicity following exposure to bifenthrin.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for bifenthrin is complete.

ii. There is no evidence that bifenthrin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study or the developmental neurotoxicity study.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on anticipated residues and percent crop treated. These assumptions are based on reliable data and will not underestimate the exposure and risk. Conservative ground and surface water modeling estimates were used. Similarly conservative Residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by bifenthrin.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to bifenthrin will occupy 25% of the aPAD for the population group all infants < 1 year old, the highest estimated acute risk receiving the greatest exposure. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenthrin from food and water will utilize 53% of the cPAD for the population group children 3–5 years old, the highest estimated chronic risk. Based on the use pattern, chronic residential exposure to residues of bifenthrin is not expected.Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term and intermediate-term risks*. Short-term and intermediate-term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenthrin is currently registered for uses that could result in short-term and intermediate-term residential exposures and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate-term exposures for bifenthrin.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 220 for the U.S. general population, 270 for all infants <1 year old, and 150 for children 3–5 years old, the subpopulation at greatest exposure. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food, water and residential uses. Therefore, EPA does not expect short and intermediate-term aggregate exposures to exceed the Agency's LOC.

4. *Aggregate cancer risk for U.S. population*. The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk. See Unit III.E.2.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to bifenthrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography (GC)/electron-capture detection (ECD) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex MRLs for the tolerances being requested in the current petition.

C. Explanation of Tolerance Revisions

1. *Vegetable, fruiting, group 8*. Tolerances are established for residues of bifenthrin *per se* at 0.05 ppm in/on eggplant, at 0.15 ppm in/on tomato, and at 0.5 ppm in/on bell and non-bell pepper. EPA has determined that a fruiting vegetables crop group tolerance for residues of bifenthrin *per se* is not appropriate for the following reasons: Maximum residues in eggplant are more than a factor of five lower than the tolerance for tomatoes and the use pattern for tomato and tomatillo are different from the other members of the crop group in terms of the PHI, maximum seasonal use rate, number of applications, and interval between applications. However, EPA is establishing tolerances for residues in/on groundcherry and pepino at 0.50 ppm based on the 0.5 ppm tolerance for bell and non-bell pepper. As 40 CFR 180.1 indicates that a tolerance for residues in/on tomato applies to tomatillo, a tolerance for residues in/on tomatillo is not required.

2. *Vegetable, root, except sugar beet and garden beet, subgroup 1B*. Carrot and radish are the representative commodities of the root vegetables, except sugar beet, crop subgroup (1B). The petitioner has proposed tolerances for residues of bifenthrin in/on root vegetables, except sugar beet, crop subgroup (1B) at 0.07 ppm. Residues of bifenthrin ranged from <0.05 to 0.07 ppm in radish roots with 4 of 6 trials showing residues levels less than the LOQ (<0.05 ppm). Residues of bifenthrin were less than the LOQ (<0.05 ppm) in/on carrots from all of the submitted trials (10 trials). Based upon the submitted data, EPA concludes a tolerance for residues of bifenthrin *per se* in/on root vegetables, except sugar beet and garden beet, crop subgroup (1B) at 0.10 ppm is appropriate.

3. *Radish, tops*. Although not proposed in the **Federal Register**, based upon the submitted data, HED concludes that a separate tolerance for residues of bifenthrin *per se* in radish, tops at 4.5 ppm is appropriate.

4. *Soybean, hulls and refined oil*. The highest-average field trial (HAFT) value for residues of bifenthrin in/on soybean, seed is 0.18 ppm. The processing factors for soybean, seeds to hulls, meal, refined oil, and AGF are as follows:

- Soybean, seed hulls: 0.18 ppm x 2.6 = 0.47 ppm.
- Soybean, seed meal: No concentration of residues.
- Soybean, seed refined oil: 0.18 ppm x 1.6 = 0.29 ppm.
- Soybean, seed grain, aspirated fractions: 0.18 ppm x 380 = 68.4 ppm.

Therefore, EPA concludes that tolerances should be established for residues of bifenthrin in/on soybean, seed hulls at 0.50 ppm, soybean, seed refined oil at 0.30 ppm and grain, aspirated fractions at 70 ppm.

V. Conclusion

Therefore, the tolerances are established for residues of bifenthrin in or on mayhaw at 1.4 ppm; vegetable, root, subgroup 1B except sugar beet and garden beet at 0.10 ppm; beet, garden, roots at 0.45 ppm; beet, garden, tops at 15 ppm; radish, tops at 4.5 ppm; soybean, seed at 0.2 ppm; soybean, hulls at 0.50 ppm; soybean, refined oil at 0.30 ppm; groundcherry at 0.5 ppm; pepino at 0.5 ppm; peanut at 0.05 ppm; pistachio at 0.05 ppm; and grain, aspirated fractions at 70 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes,

nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 10, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180. 442 is amended by alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

(a) *General.* * * * (1) * * *

Commodity	Parts per million
* * *	* *
Beet, garden, roots	0.45
Beet, garden, tops	15
* * *	* *
Grain, aspirated fractions	70
* * *	* *
Groundcherry	0.5
* * *	* *
Mayhaw	1.4
* * *	* *
Peanut	0.05
* * *	* *
Pepino	0.5
* * *	* *
Pistachio	0.05
* * *	* *
Radish, tops	4.5
* * *	* *
Soybean, hulls	0.50
Soybean, refined oil	0.30
Soybean, seed	0.2
* * *	* *
Vegetable, root, subgroup 1B except sugar beet and garden beet	0.10
* * *	* *

* * * * *

[FR Doc. E7–20753 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0848; FRL–8152–9]

Fenamidone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenamidone in or on carrot; sunflower; Brassica, head and stem, subgroup 5A; Brassica, leafy greens, subgroup 5B; vegetable, fruiting, group 8, except nonbell pepper; pepper, nonbell; vegetable, leafy, except Brassica, group 4; cotton, gin byproducts; cotton, undelinted seed; and combined residues of fenamidone and its metabolite RPA 717879 in or on strawberry. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 24, 2007. Objections and requests for hearings must be received on or before December 24, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0848. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

• Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0848 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before December 24, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0848, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of November 8, 2006 (71 FR 65506-65507) (FRL–8099–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540, and Bayer Crop Science, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petitions requested that 40 CFR 180.579 be amended by establishing tolerances for residues of the fungicide fenamidone, (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-,(S)-), in or on carrot at 0.15 parts per million (ppm) (PP 6E7109); sunflower at 0.08 ppm (PP 5E6924); brassica, head and stem, subgroup 5A at 4.0 ppm (PP# 5E6925); brassica, leafy greens, subgroup 5B at 35 ppm (PP 5E6925); vegetables, fruiting, group 8, except nonbell peppers at 2.0 ppm (PP 5E6925); vegetable, leafy, except brassica, group 4 at 35 ppm (PP 5E6925); cotton, undelinted seed at 0.02 ppm (PP 5F6898); and cotton, gin byproducts at 0.02 ppm (PP 5F6898), and residues of the fungicide fenamidone (4-H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methlthio)-5-phenyl-3-(phenylamino)-, (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl), in or on strawberry at 0.02 ppm (PP 5F6898).

This notice referenced a summary of the petition prepared by Bayer Crop Science, the registrant, which is available to the public in the docket, at *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petitions, EPA has revised the tolerance levels for some of the proposed petitions. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of fenamidone on carrot at 0.15 ppm; sunflower at 0.02 ppm; Brassica, head and stem, subgroup 5A at 5.0 ppm; Brassica, leafy greens, subgroup 5B at 55 ppm; vegetable, fruiting, group 8, except nonbell pepper at 1.0 ppm; pepper, nonbell at 3.5 ppm; vegetable, leafy, except Brassica, group 4 at 60 ppm; cotton, gin byproducts at 0.02 ppm; cotton, undelinted seed at 0.02 ppm; and strawberry at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by fenamidone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in Human Health Risk Assessment for Fenamidone on pages 31-34. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2006–0848. The docket is electronically available at http://www.regulations.gov.

The existing toxicological database for fenamidone supports the establishment of permanent tolerances for residues of fenamidone in or on the commodities proposed in this action. Fenamidone has low acute toxicity via the oral, dermal, and inhalation routes with all studies being in toxicity category III or IV. It is a moderate eye irritant, but is not a dermal irritant or a dermal sensitizer. The acute oral assay tests indicated that female rats were more sensitive to the parent than male rats.

The target organs in chronic studies in the mouse and dog were the liver, and in the rat were the liver and thyroid. In the chronic toxicity rat study, the systemic NOAEL was based on diffuse C-cell hyperplasia of the thyroid in both sexes as the most sensitive indicator of toxicity. At higher doses, follicular cells and the liver were affected. The similarity in the systemic NOAELs and the type of toxicity observed (primarily liver) for the 90–day rat studies with the parent and plant metabolites (RPA 412636, RPA 412708, and RPA 410193) demonstrated that, on a subchronic basis, the plant metabolites were not more toxic than the parent. The carcinogenic potential was negative for mice dosed up to the limit dose with liver effects seen as the systemic toxicity. In rats, fenamidone did produce a statistically significant increase ($p < 0.01$ for both trend and pair-wise comparison) in benign, endometrial stromal polyps at 5,000 ppm, the highest dose tested (HDT). Consultation with an EPA consulting pathologist resulted in these findings being characterized as benign proliferate lesions that do not progress to malignant carcinomas or sarcomas. Based on these findings, EPA classified fenamidone as ''not likely'' to be a human carcinogen. All mutagenicity studies were negative for both the parent and plant metabolites (RPA 412636, RPA 412708, and RPA 410193).

Fenamidone did not demonstrate any qualitative or quantitative increased susceptibility in the rat and rabbit developmental toxicity studies or the 2-generation rat reproduction study. In rabbits, there were no developmental effects up to the HDT and in the presence of maternal toxicity. In rats, developmental findings and maternal findings both occurred at the limit dose. In the reproduction study (Sprague Dawley rat), decreased absolute brain weight and pup body weight occurred at the same dose levels as decreased absolute brain weight and parental body weight, food consumption, and increased liver and spleen weight. There were no effects on fertility and other measured reproductive parameters. In the acute neurotoxicity study in rats, the most commonly observed clinical sign was staining/soiling of the anogenital region at 500 and 2,000 milligrams/kilogram (mg/kg). These findings were observed at low incidences and were consistent with those observed on day 1 of the functional observational battery (FOB). Other day-1 FOB findings included mucous in the feces of the 500 and 2,000 mg/kg males and females; hunched posture when walking or sitting in the 2,000 mg/kg females; and unsteady gait in the 500 and 2,000 mg/kg females. In the subchronic neurotoxicity study (Sprague Dawley rat), marginal decrease in brain weights was observed only in high dose males. Additionally, fenamidone displayed decreased brain weight in F_1 female adults and F_2 female offspring in the rat reproduction study. Other evidence of neurotoxicity (clinical signs such as lethargy, prostration, tremors, eye closure, unsteady gait) was observed in a mouse bone marrow micronucleus assay with plant metabolites (RPA 412636 and RPA 412708).

Based on the evidence of neurotoxicity summarized above, EPA requested a developmental neurotoxicity (DNT) study conducted with Sprague Dawley rats. The petitioner submitted a DNT study conducted with Wistar rats. In this study, no maternal toxicity was observed at doses up to 4,700 ppm (429 mg/kg/day). The offspring systemic toxicity manifested as decreased body weight (9 to 11%) and body weight gain (8 to 20%) during pre-weaning and decreased body weight (4 to 6%) during post-weaning. The offspring NOAEL was 1,000 ppm (92.3 mg/kg/day). The results of this DNT study suggest increased susceptibility of offspring to fenamidone; however, the concern for increased susceptibility is low since there is a well established NOAEL protecting the offspring and the NOAEL used for establishing the chronic reference dose (cRfD) is approximately 45X below the NOAEL observed for the offspring toxicity in the DNT study. EPA reviewed these data and determined that the 10X database uncertainty factor due to lack of DNT should be removed. However, since this study was conducted using Wistar rats rather than Sprague Dawley rat as requested, EPA requested a modified DNT in the Sprague Dawley rat with measurement of the following endpoint: brain weights (samples should be retained for possible morphometric measurements); this study is necessary to confirm the lack of brain weight changes in the Wistar rat DNT.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles

EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for fenamidone used for human risk assessment can be found at *www.regulations.gov* in the document entitled ''Fenamidone Human Health Risk Assessment'' on page 12 in Docket ID EPA–HQ–OPP–2006–0848.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fenamidone, EPA considered exposure under the petitioned-for tolerances as well as all existing fenamidone tolerances in 40 CFR 180.579. The Agency generated dietary exposure estimates for exposure to fenamidone and its residues of concern. The following paragraphs are summaries of these analyses. EPA assessed dietary exposures from fenamidone food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

In estimating acute dietary exposure to fenamidone, EPA used food consumption information from the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed maximum field trial residues for the residues of concern for risk assessment and 100% crop treated. The Dietary Exposure Evaluation Model (DEEM™) (ver. 7.81) default processing factors were maintained for all commodities excluding grape juice, dried potato, tomato paste, and tomato puree; for these commodities; the DEEM™ (ver. 7.81) default processing factors were reduced to 1 based on processing data (grape), or empirical processing factors were applied to the RAC residue (tomato paste, tomato puree, and dried potato).

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment for fenamidone, EPA used the food consumption data from the USDA 1994-1996 and 1998 CSFII. As to residue levels in food, EPA assumed maximum field trial residues for the residues of concern for risk assessment and 100% crop treated. DEEM™ (ver. 7.81) default processing factors were maintained for all commodities excluding grape juice, dried potato, tomato paste, and tomato puree; for these commodities, the DEEM™ (ver. 7.81) default processing factors were reduced to 1 based on processing data (grape), or empirical processing factors were applied to the RAC residue (tomato paste, tomato puree, and dried potato).

iii. *Cancer*. EPA has classified fenamidone as a ''not likely'' human carcinogen. Therefore, a cancer dietary exposure analysis was not performed.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water*. Biotransformation (metabolism) under aerobic conditions and direct photolysis in water are the major routes of transformation of fenamidone in the environment. Fenamidone half-lives were 5 to 8 days in aerobic soils, 67 to 128 days in aerobic water-sediments, and 5 to 8 days in water exposed to summer sunlight (direct photolysis). Fenamidone is highly persistent in anaerobic water-sediment systems (half-life longer than 1,000 days). Adsorption of fenamidone onto soils is moderate (mean K_{oc} less than 388). Therefore, fenamidone is not persistent in soil or in shallow water under aerobic conditions. Under field conditions, the half-lives of fenamidone ranged from 9 to 82 days. Given that biotransformation is the major route of degradation and considering the widespread, potential use areas of different soils, microbial population and activity, water bodies, climates/meteorology, and agricultural practices, high variability in persistence in soil and water-sediment systems is to be expected. Likewise, variability in type and relative amount of products would also be expected. EPA reviewed the environmental fate data for fenamidone and concluded that the residues of concern in water are RPA 412636, RPA 412708, RPA 411639, RPA 413255, and RPA 409446, RPA 410995RPA-412636.

The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for fenamidone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of fenamidone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and the Screening Concentration in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of fenamidone for acute exposures are estimated to be 41.66 parts per billion (ppb) for surface water and 178 ppb for ground water. The EECs for chronic exposures are estimated to be 11.88 ppb for surface water and 178 ppb for ground water. Estimates were performed for combined residues of parent fenamidone and the residues of concern previously mentioned.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute and chronic dietary risk assessment, the water concentration value of 178 ppb (highest estimate; based on three applications at 0.267 pounds of active ingredient per acre) was used to access the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenamidone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fenamidone and any other substances and fenamidone does not appear to produce a toxic metabolite produced by

other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenamidone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1.*In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. No quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental toxicity studies was observed. There was no developmental toxicity in rabbit fetuses up to 100 mg/kg/day (HDT), which resulted in an increased absolute liver weight in the does. Since the liver was identified as one of the principal target organs in rodents and dogs, the occurrence of this finding in rabbits at 30 and 100 mg/kg/day was considered strong evidence of maternal toxicity. In the rat developmental study, developmental toxicity manifested as decreased fetal body weight and incomplete fetal ossification in the presence of maternal toxicity in the form of decreased body weight and food consumption at the limit dose (1,000 mg/kg/day). The effects at the limit dose were comparable between fetuses and dams. No quantitative or qualitative evidence of increased susceptibility was observed in the 2-generation reproduction study in rats. In that study, both the parental and offspring LOAELs were based on decreased absolute brain weight in female F_1 adults and female F_2 offspring at 89.2 mg/kg/day. At 438.3 mg/kg/day, parental effects consisted of decreased body weight and food consumption, and increased liver and spleen weight. Decreased pup body weight was also observed at the same dose level of 438.3 mg/kg/day. There were no effects on reproductive performance up to 438.3 mg/kg/day (HDT). The DNT study conducted with Wistar rats showed no maternal toxicity up to 429 mg/kg/day. The offspring systemic toxicity manifested as decreased body weight (9 to 11%) and body weight gain (8 to 20%) during pre-weaning and decreased body weight (4 to 6%) during post-weaning with a NOAEL of 92.3 mg/kg/day. The results of this DNT study suggest increased susceptibility of offspring to fenamidone; however, the concern for increased susceptibility is low since there is a well established NOAEL protecting the offspring and the NOAEL used for establishing the chronic reference dose (cRfD; see below) is approximately 45x below the NOAEL observed for the offspring toxicity in the DNT study.

There is confidence that the sensitivity of any developmental neurological effects have been identified. EPA required a DNT based on a marginal decrease in brain weight in high dose males in the subchronic neurotoxicity study in rats, decreased brain weight in female adults and female offspring in the 2-generation reproduction study, and clinical signs that may be indicative of neurotoxic effects at relatively high doses in several studies. A DNT was conducted and showed no neurotoxic effects. Because, however, the DNT was conducted in a different strain of rat (Wistar) than the studies that showed brain effects (Sprague-Dawley), EPA has required that an abbreviated DNT be conducted in the Sprague-Dawley rat that focuses on brain effects. Due to the clear NOAEL from the existing DNT as well as the clear NOAELs in the studies evidencing brain effects, EPA regards the abbreviated DNT as confirmatory in nature and unlikely to change the characterization or magnitude of the risk for fenamidone.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicology database is complete other than the confirmatory DNT study.

ii. No qualitative or quantitative increased susceptibility in the developmental toxicity studies (rat and rabbit).

iii. No qualitative or quantitative increased susceptibility in the 2-generation reproduction study (rat).

iv. Low concern for residual uncertainties in the DNT study (rat) since there is a well established offspring NOAEL which is 45X greater than the NOAEL used to establish the chronic dietary endpoint.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated (CT) and tolerance-level residues or maximum levels from crop field trials. Conservative ground and surface water modeling estimates were used. These assessments will not underestimate the exposure and risks posed by fenamidone.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fenamidone will occupy 5% of the aPAD for the population group children 1 to 2 years old, the highest estimated acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenamidone from food and water will utilize 82% of the cPAD for the population group children 1 to 2 years old, the highest estimated chronic risk. There are no residential uses for fenamidone that result in chronic residential exposure to fenamidone.

3. *Aggregate cancer risk for U.S. population*. EPA has classified fenamidone as a ''not likely'' human carcinogen. EPA does not expect fenamidone to pose a cancer risk.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenamidone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (a liquid chromatograph/mass spectrometer/mass spectrometer (LC/MS/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex maximum residue limits for the proposed tolerances.

C. Explanation of Tolerance Revisions

1. *Sunflower*. The geographical representation of the sunflower field trial data fulfill the data requirements suggested in OPPTS 860.1500 for sunflower. Based on the sunflower seed field trial data, EPA concludes that a sunflower seed tolerance for residues of fenamidone *per se* of 0.02 ppm is appropriate.

2. *Brassica, head and stem, subgroup 5-A*. The geographical representation of the broccoli, cabbage, and mustard green field trial data fulfill the data requirements suggested in OPPTS 860.1500 for a Brassica (cole) leafy vegetables crop group registration or crop subgroup 5a and 5b tolerances. EPA notes that these field trials employed 1.0x the proposed single application rate but 1.4x the proposed seasonal rate. Based on the residue decline data which indicated that combined residues of fenamidone, RPA 717879, RPA 408056, and RPA 405862 reduced 52% (broccoli), 43% (cabbage), and 87% (mustard green) as the pre-harvest (PHI) increased from 0 to 7 days, EPA concludes that the final application, which was conducted at 1x the proposed rate, will drive the magnitude of the residue in or on the Brassica (cole) leafy vegetables. Based on the broccoli, cabbage, and mustard green field trial data and the tolerance spreadsheet calculator, tolerances for residues of fenamidone *per se* of 5.0 ppm, 1.3 ppm, and 55 ppm were recommended. Since the maximum residues and recommended tolerances are not within 5x, EPA concludes that a crop group tolerance is not appropriate but that crop subgroup tolerances are appropriate. EPA concludes that a head and stem Brassica crop subgroup 5a tolerance of 5.0 ppm and a leafy Brassica greens crop subgroup 5b tolerance of 55 ppm for residues of fenamidone *per se* are appropriate.

3. *Vegetable, fruiting, group 8*. The geographical representation of the tomato and pepper field trial data fulfill the data requirements suggested in OPPTS 860.1500 for a fruiting vegetable crop group registration. EPA notes that these field trials employed 1.0x the proposed single application rate but 1.4x the proposed seasonal rate. Based on the residue decline data which indicated that combined residues of fenamidone, RPA 717879, RPA 408056, and RPA 405862 reduced 65% (bell pepper) and 34 to 73% (tomato) as the PHI increased from 0 to 21 (bell pepper) and 7 to 35 days (tomato; nonbell pepper decline data were not submitted), EPA concludes that the final application, which were conducted at 0.7 to 1.0x the proposed rate, will drive the magnitude of the residue in or on fruiting vegetables.

4. *Pepper, nonbell*. Based on the tomato, bell pepper, and nonbell pepper field trial data and the tolerance spreadsheet calculator, tolerances for the residues of fenamidone *per se* of 1.0 ppm, 0.40 ppm, and 3.5 ppm were recommended. Since the pepper and nonbell pepper maximum residues and recommended tolerances are not within 5X, EPA concludes that a fruiting vegetable crop group tolerance is not appropriate. Based on the residue data and since tomato is the major food commodity in the fruiting vegetable crop group, EPA concludes that it is appropriate to set nonbell pepper and fruiting vegetable (except nonbell pepper) tolerances. Therefore, EPA concludes that the following tolerances for residues of fenamidone *per se* are appropriate: fruiting vegetable (except nonbell pepper) - 1.0 ppm and nonbell peppers - 3.5 ppm (the currently established tomato tolerance should be deleted).

5. *Vegetable, leafy, except Brassica, group 4*. The geographical representation of the lettuce (head and leaf), celery, and spinach field trial data fulfill the data requirements suggested in OPPTS 860.1500 for leafy vegetables (except Brassica) crop group registration. EPA notes that these field trials employed 1.0x the proposed single application rate but 1.3 to 1.4x the proposed seasonal rate. Based on the residue decline data which indicated that combined residues of fenamidone, RPA 717879, RPA 408056, and RPA 405862 reduced 36% (celery), 70% (spinach), and 99% (leaf lettuce) as the PHI increased from 0 to 7 days, EPA concludes that the final application, which was conducted at 1x the proposed rate, will drive the magnitude of the residue in or on leafy vegetables (except Brassica). Based on the head lettuce, leaf lettuce, celery, and spinach field trial data and the tolerance spreadsheet calculator, tolerances for the residues of fenamidone *per se* of 18 ppm, 45 ppm, 45 ppm, and 60 ppm were recommended. EPA concludes that a leafy vegetables (except Brassica) crop group tolerance of 60 ppm for residues of fenamidone *per se* is appropriate (the currently established lettuce, leaf and lettuce, head tolerances should be deleted).

V. Conclusion

Therefore, the tolerances are established for residues of fenamidone, (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-(S)-), in or on carrot at 0.15 ppm; sunflower at 0.02 ppm; Brassica, head and stem, subgroup 5A at 5.0 ppm; Brassica, leafy greens, subgroup 5B at 55 ppm; vegetable, fruiting, group 8, except nonbell pepper at 1.0 ppm; pepper, nonbell at 3.5 ppm; vegetable, leafy, except Brassica, group 4 at 60 ppm; cotton, gin byproducts at 0.02 ppm; and cotton, undelinted seed at 0.02 ppm.

The tolerance is also established for combined residues of fenamidone, (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methlthio)-5-phenyl-3-(phenylamino, (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl) in or on strawberry at 0.02 ppm.

Tolerances should be deleted for lettuce, leaf; lettuce; head; and tomato as these commodities are included in the newly established ''vegetable, fruiting, group 8, except nonbell peppers,'' group, and vegetable, leafy, except Brassica, group 4.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB

approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 5, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.579 is amended by alphabetically adding the commoditiesBrassica, head and stem, subgroup 5A; Brassica, leafy greens, subgroup 5B;carrot; cotton, gin byproducts; cotton, undelinted seed, pepper, nonbell; sunflower; vegetable, fruiting, group 8, except nonbell pepper; vegetable, leafy, except Brassica, group 4; and by removing lettuce, head; lettuce, leaf; and tomato from the table in paragraph (a)(1) and by alphabetically adding strawberry to the table in paragraph (d) to read as follows:

§ 180.579 Fenamidone; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Brassica, head and stem, subgroup 5A	5.0
Brassica, leafy greens, subgroup 5B	55
Carrot	0.15
Cotton, gin byproducts	0.02
Cotton, undelinted seed	0.02
* * * *	*
Pepper, nonbell	3.5
* * * *	*
Sunflower	0.02
* * * *	*
Vegetable, fruiting, group 8, except nonbell pepper	1.0
Vegetable, leafy, except Brassica, group 4	60
* * * *	*

* * * * *

(d) * * *

Commodity	Parts per million
* * * *	*
Strawberry	0.15
* * * *	*

[FR Doc. E7–20670 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06–123; FCC 07–174]

Establishment of Policies and Service Rules for the Broadcasting-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Order on Reconsideration,* the Federal Communications Commission (Commission) reconsiders, in part, *sua sponte,* its *Report and Order* in this proceeding in which it adopted processing and service rules for the 17/24 GHz Broadcasting-Satellite Service (BSS). In the *Report and Order,* the Commission adopted a framework in which 17/24 GHz BSS space stations would operate at orbital locations spaced at four-degree intervals, as set forth in Appendix F of the *Report and Order.* In this Order on Reconsideration, the Commission provides additional flexibility to 17/24 GHz BSS space station operators by allowing them to operate their space stations, upon request, at locations other than those specified in Appendix F of the *Report and Order.* Specifically, the Commission will assign space stations to orbital locations that are offset from the Appendix F locations by up to one degree, without requiring them to reduce power or accept additional interference, if there are no licensed or prior-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station.

DATES: Effective November 23, 2007.

ADDRESSES: You may submit comments, identified by IB Docket No. 06–123, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• *Mail:* Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Andrea Kelly (202) 418–7877, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in IB Docket No. 06–123, FCC 07–174, adopted September 28, 2007 and released on September 28, 2007. The full text of the *Order on Reconsideration* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com.*

Pursuant to the Regulatory Flexibility Act, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) in the *Report and Order* in this proceeding. None of the rule revisions adopted by the Commission in this *sua sponte Order on Reconsideration* affect the analysis in the *Report and Order.* We therefore incorporate by reference the Commission's prior regulatory flexibility analysis. The text of the FRFA is set forth in Appendix A of the *Report and Order*, 72 FR 49999, August 29, 2007.

Paperwork Reduction Act Requirements

The actions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 at the initiation of the Notice of Proposed Rulemaking, 71 FR 43687, August 2, 2006, in this proceeding, and we have previously received approval of the associated information collection requirements from the Office of Management and Budget (OMB) under OMB Control No. 3060–1097. The *sua sponte Order on Reconsideration* does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Summary of Report and Order

1. In this *Order on Reconsideration* (*Reconsideration Order*), we reconsider, in part, *sua sponte*, our *Report and Order* in this proceeding, in which we adopted processing and service rules for the 17/24 GHz Broadcasting-Satellite Service (BSS). In the *Report and Order*, we adopted a framework in which 17/24 GHz BSS space stations would operate at orbital locations spaced at four-degree intervals, as set forth in Appendix F of the *Report and Order*. In this *Reconsideration Order*, we provide additional flexibility to 17/24 GHz BSS space station operators by allowing them to operate their space stations, upon request, at locations other than those specified in Appendix F. Specifically, we will assign space stations to orbital locations that are offset from the Appendix F locations by up to one degree, without requiring them to reduce power or accept additional interference, if there are no licensed or prior-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station.

2. In the *Report and Order*, we adopted a four-degree orbital spacing framework and a grid, in Appendix F of the *Report and Order*, specifying the locations that could be assigned to 17/24 GHz BSS satellites. We recognized, however, that it may not be possible to locate a 17/24 GHz BSS space station precisely at some of the orbital locations specified in Appendix F of the *Report and Order.* For example, due to stationkeeping concerns, it may not be possible to locate a 17/24 GHz BSS satellite at an Appendix F orbital location already occupied by other satellites operating in different frequency bands. Further, because of potential interference, it may not be possible to operate a 17/24 GHz BSS space station at or near locations where another satellite, such as a U.S.-licensed Direct Broadcast Service (DBS) space station, is receiving feeder-link signals in the 17.3–17.8 GHz band. Thus, in the *Report and Order*, we stated that we would not require that 17/24 GHz BSS space stations be located precisely at the orbital locations specified in Appendix F. Nevertheless, we required applicants seeking to operate a 17/24 GHz BSS space station at a location offset from an Appendix F location to make a technical showing that the proposed satellite will not cause any more interference to a 17/24 GHz BSS space station operating at an Appendix F location than would be caused if the proposed offset space station were positioned precisely at an Appendix F location. Further, we stated that applicants seeking to operate at an offset location must agree to accept any increased interference that may result from operating at that location.

3. Following release of the *Report and Order*, we received a number of *ex parte* filings commenting on the four-degree orbital spacing framework. Specifically, EchoStar Satellite L.L.C. (EchoStar) requests that the Commission provide additional flexibility by allowing 17/24 GHz BSS space station operators to operate at locations that are offset from the Appendix F locations by up to one degree, without reducing power or accepting any additional interference, if the adjacent Appendix F location is unassigned. EchoStar also requests that we require future applicants seeking to operate at an Appendix F location adjacent to an offset location to protect the offset licensee from harmful interference. EchoStar states that this additional flexibility is necessary to compensate for the technical limitations of a small-dish satellite service such as the 17/24 GHz BSS. Specifically, EchoStar states that a uniform four-degree spacing framework will not allow certain operators, particularly those with in-orbit DBS space stations, to utilize a small, single subscriber antenna that will allow customers to receive service in both the DBS and 17/24 GHz BSS frequency bands. EchoStar states that a second consumer dish would be required to receive signals from two direct-to-home (DTH) satellites located between 0.7 and 1.8 degrees apart, which would be the case for the 110° W.L. DBS orbital location and the 111° W.L. 17/24 GHz BSS Appendix F location, as well as the 61.5° W.L. DBS orbital location and 63° W.L. 17/24 GHz BSS Appendix F location. As such, EchoStar claims that it would be required to implement a ''two-dish'' solution or a larger dish at added expense and complexity to dish design, manufacturing, and installation. EchoStar asserts this would disparately impact its subscriber base.

4. DIRECTV, Inc. (DIRECTV) filed an *ex parte* letter stating that it supports EchoStar's proposal in cases where the adjacent Appendix F location remains

unassigned. DIRECTV contends that the Commission should not require future operators assigned to Appendix F locations to protect operators at offset locations. DIRECTV does not claim that EchoStar's proposal would harm its current plans to align its 17/24 GHz BSS space stations with its Ka-band fixed-satellite service (FSS)-DTH space stations. Rather, DIRECTV focuses on future applications, asserting that EchoStar's proposal would technically compromise a number of orbital locations by rendering them less than optimally functional. DIRECTV proposes a modified approach whereby a licensee operating at an offset location would be allowed to operate at full power only until a 17/24 GHz BSS operator is licensed at the adjacent Appendix F location, at which time the offset operator would have to modify its operations so that it will not cause harmful interference to the licensee operating at the Appendix F location. In response to DIRECTV's modified approach, EchoStar asserts that DIRECTV's proposal does not provide sufficient certainty that full-power offset operators will be able to continue to provide quality service using single subscriber antennas. EchoStar contends that DIRECTV's modified approach is essentially a reversion back to our *Report and Order* with respect to how we would treat space stations operating at offset locations. Furthermore, EchoStar asserts that its own proposal would not adversely affect DIRECTV's planned use of the 17/24 GHz BSS band.

5. Further, SES Americom, Inc. (SES Americom) filed an *ex parte* letter opposing EchoStar's proposal. SES Americom states that EchoStar has exaggerated the technical challenges inherent in a uniform four-degree orbital spacing framework, and asserts that, with relatively simple system design modifications, the framework can accommodate single subscriber antennas with dual-band receivers. In addition, SES Americom agrees with DIRECTV that adopting EchoStar's request would render a number of Appendix F locations unusable for DTH video service. Finally, SES Americom states that it would not object to a one-degree shift to the east for Appendix F locations in the orbital arc from 43° W.L. to 63° W.L. SES Americom further states that this shift would allow for utilization of a single-feed subscriber antenna for DBS operations at the 61.5° W.L. orbital location and 17/24 GHz BSS operations at 62° W.L. In response, EchoStar claims that SES Americom underestimates the technical concerns EchoStar has with the four-degree orbital spacing framework adopted in the *Report and Order.* EchoStar also notes that the shift proposed by SES Americom would not address all of EchoStar's concerns at the 110° W.L. and 61.5° W.L. orbital locations.

6. On July 20, 2007, EchoStar filed an *ex parte* letter in which it reiterated that the Commission should afford both current and future applicants the flexibility to operate at offset locations at full power. EchoStar asserts that this flexibility may be important for future applicants that are seeking to co-locate existing or planned satellites with 17/24 GHz BSS space stations. EchoStar states that its approach would level the playing field for all current and future applicants. In addition, EchoStar contends that its proposal may provide satellite operators with authorizations from other countries the flexibility to integrate 17/24 GHz BSS service with facilities operating from orbital locations that do not conform with those in Appendix F.

7. On September 12, 2007, Telesat Canada filed an *ex parte* letter urging the Commission to include two conditions for each 17/24 GHz BSS authorization. The first condition would make the grant subject to the licensee coordinating with satellite operators having International Telecommunication Union (ITU) date priority. The second condition Telesat requests would make the orbital location specified in the grant subject to modification to an offset location if necessary to facilitate coordination with a satellite operator having ITU date priority.

8. On September 14, 2007, EchoStar filed an *ex parte* letter reiterating that licensees should have the flexibility to operate up to one degree offset from Appendix F locations on a permanent basis at full power and with full interference protection. EchoStar also reiterates that ''all satellite providers should be on a level playing field for new spectrum,'' and that ''all satellite providers need this spectrum as soon as possible.''

9. On September 19, 2007, DIRECTV filed an *ex parte* letter restating its earlier argument that a number of Appendix F locations would suffer reduced usefulness and claiming that these locations would experience a 90% reduction in received signal quality, thus requiring an antenna diameter of 1.1 meter to compensate for this loss. DIRECTV also restates its claim that operators will have increased incentive to apply for offset locations due to the likelihood of wider orbital separation, and that the worst case scenario would produce a 33% decrease in orbital capacity relative to the current Appendix F plan. DIRECTV also takes issue with EchoStar's need for a one-degree offset to remedy its problem, and proposed several alternative solutions including: Operation at smaller offsets; operation from nearby orbital locations with use of an additional feed on one of EchoStar's current antennas; or the use of case-by-case waivers.

10. On September 21, 2007, SES Americom filed an *ex parte* letter reiterating its opposition to EchoStar's request for revisions to the orbital spacing plan adopted in this proceeding and explains ''that grant of the flexibility requested by EchoStar would fundamentally undermine the four-degree spacing adopted in the Order.'' SES Americom also notes ''that [its] affiliate, Ciel Satellite LP, was selected by Industry Canada to operate in 17/24 GHz spectrum and is expected to seek U.S. market access once the current application freeze has been lifted.''

11. On September 25, 2007, SES Americom filed an *ex parte* letter opposing EchoStar's proposal, arguing that it would undermine the certainty established by the Commission's Appendix F plan, and proposing alternative solutions including small offsets, alternate locations or the use of waivers.

12. On September 26, 2007, Telesat filed an *ex parte* letter stating that it generally supports EchoStar's proposal, because the resulting additional flexibility potentially could resolve international coordination issues at orbital locations that are of concern to Telesat. Telesat asserts that a one degree change may be insufficient for international coordination purposes. Telesat states that one of the four 17/24 GHz BSS orbital locations for which it has been authorized, at 72.5° W.L., will be 1.5° away from the nearest Appendix F location. Telesat asserts that in the event that EchoStar's proposal is adopted, departures from Appendix F locations of more than one degree should be permitted if needed to facilitate international coordination.

13. On September 26, 2007, EchoStar filed an *ex parte* letter stating that the current rules frustrate video competition, harm consumers, and jeopardize delivery of HD services. EchoStar also states that ''DIRECTV's waiver proposal is not a viable solution'' and that a uniform four degree spacing plan will lead to higher prices, delays in the provision of new services, and will force ''consumers to acquire a second dish.'' EchoStar also contends that DIRECTV's DBS orbital location line up with the Appendix F locations and EchoStar's do not.

14. In response, on September 27, 2007, DIRECTV filed an *ex parte* letter stating that only three of its five full contiguous United States (CONUS) orbital locations align with the Appendix F locations. DIRECTV also argues that the fact that international coordination presents a challenge in this band ''is all the more reason not to allow operators to compromise DTH orbital locations that could otherwise be used in the coordination process to the benefit of all U.S. licensees.'' DIRECTV also notes that ''EchoStar's own analysis shows that consumers will not need a second dish to receive signals from a reverse band satellite that is slightly offset from a DBS orbital location.''

15. As we explain below, we find, upon reconsideration, that it is in the public interest to provide additional flexibility in the orbital spacing framework adopted in the *Report and Order.* In adopting the four-degree framework, our primary consideration was to balance the dual goals of maximizing orbital capacity while minimizing interference into small-diameter receive antennas. Based on the *ex parte* presentations we have received, however, we are persuaded that this balance would not be disrupted by permitting applicants to operate at certain locations offset from the Appendix F locations by up to one degree without being required to reduce power and accept additional interference.

16. *Sour Spot.* In the *ex parte* filings received on this issue, there is uniform agreement that fundamental principles of antenna design make it difficult for a small subscriber antenna to receive signals from two space stations if those space stations are located between 0.7 and 1.8 degrees apart. We will call this 0.7 to 1.8 range a ''sour spot.'' The parties that filed *ex partes,* however, draw different conclusions regarding how to compensate for these sour spots. EchoStar requests the flexibility to offset future 17/24 GHz BSS space stations at up to 1 degree while still retaining the ability to transmit at full power and to receive full interference protection. DIRECTV and SES Americom both argue that EchoStar's concerns could be addressed by an offset of less than 1 degree and typically of between 0.3 to 0.5 degrees. DIRECTV argues further that such offsets would require the offset operator to make only small reductions in power and would have minimal impact on operations.

17. Assuming DIRECTV's assertion that small offsets would only require small reductions in power is correct, we find that any reduction in power to protect a later authorized Appendix F licensee would unfairly penalize applicants whose existing infrastructure does not comport with a uniform four-degree spacing framework. Allowing applicants whose infrastructure is not compatible with the four-degree spacing framework to use the flexibility we adopt here to operate at full power will provide consumer with the most competitive service options. We recognize that all offset operators may not need to take advantage of full one-degree offsets. Nevertheless, providing the flexibility for up to a one-degree offset should accommodate the operating needs of most prospective applicants, such as antenna/dish configuration, while maintaining the number of orbital slots and minimizing the impact on satellite capability.

18. *Orbital Efficiency.* DIRECTV argues that up to a 33% reduction of spectrum efficiency could result from allowing 17/24 GHz BSS space station operators to locate their space stations up to one degree from Appendix F locations at full power and with full interference protection. DIRECTV bases this assertion on a highly unlikely scenario that assumes for every three Appendix F locations, a space station is offset by one degree, another location eight degrees away has a space station at the Appendix F location, and no operator files for the location in between. DIRECTV's scenario repeats this pattern across the Appendix F grid of four-degree locations. In light of the *ex partes* received and the interest expressed by operators, we do not expect this scenario to occur. In addition, as discussed above, we do not believe that many 17/24 GHz BSS space station operators will need for technical reasons to avail themselves of the full one-degree offset. Further, as a practical matter, because an applicant can only utilize this flexibility if there are no licensed or prior-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station, use of this flexibility is less likely. Finally, we note that in the scenario DIRECTV describes, the operator at the location between the offset satellite and the satellite at the precise Appendix F location could offset its satellite half a degree away from the offset satellite and thus achieve 3.5-degree spacing relative to the other two space stations. Based upon DIRECTV's analysis of a 0.5 offset, such a 3.5-degree spacing should have minimal impact on any satellite operations.

19. *10 dB Reduction.* DIRECTV argues that allowing a one-degree offset at full power and with full interference protection results in a 10 dB reduction in carrier-to-interference ratio (C/I) for the 17/24 GHz BSS space station that is required to protect the offset space station. DIRECTV asserts that operators at the Appendix F orbital locations closest to a one-degree offset satellite would be so compromised in performance that these locations would be unlikely to be used. DIRECTV, however, did not present an analysis of the reduction in carrier-to-noise-plus-interference ratio (C/(N+I)), which is the more appropriate signal quality metric that determines the satellite link performance.

20. *Waiver.* Finally, both DIRECTV and SES Americom suggest that where the existing flexibility adopted in our *Report and Order* is insufficient, EchoStar and other applicants should avail themselves of the waiver process under § 1.3 of our rules. As we have concluded, adopting the flexibility proposed by EchoStar best serves the public interest. There is no public policy benefit from resolving this issue in a piecemeal fashion through individual waiver requests. Acting here, rather than through individual waiver requests, provides regulatory certainty now to all parties.

21. Consequently, we conclude that adopting the additional flexibility best addresses concerns regarding the compatibility of 17/24 GHz BSS orbital locations with the existing DBS infrastructure. This additional flexibility will allow for an orbital assignment framework that is better aligned with applicants' existing infrastructure and plans for launching satellite systems in this band. Providing both current and future applicants the flexibility to locate their 17/24 GHz BSS satellites at preferred orbital locations relative to their existing infrastructure will enable them to serve subscribers with one small multiple-feed antenna. While we acknowledge that this flexibility may reduce the number of orbital locations capable of operating at full power, we conclude that, on balance, the public interest is best served by affording operators the greatest opportunity to provide expanded DTH service to customers using a small single antenna.

22. Under our revised orbital spacing framework, we will assign 17/24 GHz BSS space stations to orbital locations offset from Appendix F locations by up to one degree, and allow them to operate at full power and with full interference protection, if there is no 17/24 GHz BSS space station assigned to, or a prior-filed application requesting assignment to, an orbital location less than four degrees from the applicant's proposed offset location. Thus, a full-power offset space station operator may operate at the

maximum power flux density levels specified in §§ 25.208(c) and (w) of our rules, and will be accorded the same interference protection that it would receive if the space station were located precisely at an Appendix F location. Further, once we have authorized a full-power offset space station, subsequently licensed space stations operating less than four degrees away from the offset space station will be required to reduce transmitted power levels to protect the offset space station from excessive interference. Moreover, the newly licensed reduced-power space station must accept any interference from the full-power offset space station that results from the reduced orbital spacing. This will be the case regardless of whether the new space station is operating at an Appendix F location or an offset location. To accommodate this more flexible framework, we must make several changes to the technical rules we adopted in the *Report and Order.* We discuss these changes below.

23. *Section 25.262.* We make a number of changes to § 25.262 of the rules, which governs domestic coordination requirements for space stations operating in the 17/24 GHz BSS. First, we redesignate § 25.262(a) as § 25.262(f). Further, we add new §§ 25.262(a) and (b) to recognize the classes of 17/24 GHz BSS space stations that may operate at the maximum power flux density levels permitted by our rules, and with full interference protection. This includes both space stations operating at Appendix F locations and full-power offset space stations. In addition, we add § 25.262(c) to govern power levels on replacement space stations and space stations authorized at orbital locations previously assigned to 17/24 GHz BSS space stations that have become available for reassignment.

24. We also add § 25.262(d) to our rules, which provides that space stations located less than four degrees away from a space station authorized to operate at full power under § 25.262(b) may not cause any more interference to the full-power network than would be caused if the proposed space station was four degrees away. The rule also requires the reduced-power space station to accept any increased interference from the full-power Appendix F or full-power offset space station than would be caused if the proposed reduced-power space station were located four degrees away. Finally, we also add § 25.262(e), which requires reduced-power satellites to accept any increased interference from 17/24 GHz BSS space stations operating in conformance with our rules.

25. *Section 25.140(b).* Section 25.140(b) of our rules addresses the interference analysis that must be submitted with each 17/24 GHz BSS application. As with all FSS space station applications, 17/24 GHz BSS applicants are required to submit an interference analysis demonstrating the compatibility of their proposed system with satellite networks operating at the two nearest adjacent orbital locations. Under the uniform four-degree spacing framework adopted in the *Report and Order,* we presumed that the nearest adjacent orbital positions would be no closer than four degrees away. As a consequence of the more flexible licensing framework adopted in this Order, this assumption is no longer valid and the interference coordination scenario for 17/24 GHz BSS space stations becomes more complex. Specifically, the coordination requirements and operating burdens will vary, depending upon a combination of factors including: (1) Whether, and to what extent, the applicant seeks to operate at an offset orbital location; and (2) the location and authorized power levels of other licensed and proposed 17/24 GHz BSS space stations. To provide 17/24 GHz BSS space station applicants with guidance when filing their applications, we modify § 25.140(b) to codify the multiple interference scenarios and associated filing requirements.

26. The first scenarios arise where an applicant proposes to operate at an Appendix F location. In most of these cases, the applicant will be required to submit an interference analysis demonstrating its compatibility with current or future 17/24 GHz BSS space stations at least four degrees away. However, an applicant proposing to operate at an Appendix F orbital location that is less than four degrees away from an operator authorized pursuant to § 25.262(b) of our rules, will be required to reduce its power to protect the full-power offset operator's network, and will be required to accept the additional interference that results from the full-power operation at the adjacent offset location. Thus, in such cases, the applicant must demonstrate that it will cause no more interference to the full-power offset operator's 17/24 GHz BSS network than if the offset operator's space station were located four degrees away. We amend § 25.140(b)(3) of our rules, and add §§ 25.140(b)(5), and (b)(6), to reflect these scenarios.

27. Applicants that propose to operate 17/24 GHz BSS space stations at offset locations fall under one of three scenarios. We adopt § 25.140(b)(4)(i) to cover the situation where there is no other previously authorized or proposed 17/24 GHz BSS space station located less than four degrees away from the proposed offset space station and the applicant proposes to operate the offset space station at full-power and with full interference protection. In this case, we require the applicant to provide an interference analysis demonstrating the compatibility of its proposed offset network with other 17/24 GHz BSS space stations at least four degrees away from its proposed location.

28. Section 25.140(b)(4)(ii) reflects the situation where the applicant proposes to operate its space station at an offset location, but there is a licensed or a prior-filed application for a space station within four degrees of the proposed offset location. In this case, the applicant must provide an interference analysis demonstrating that its proposed space station will not cause any more interference to adjacent 17/24 GHz BSS satellite networks than if it were located at the Appendix F location from which it is offset.

29. Finally, § 25.140(b)(4)(iii) reflects the situation where an applicant proposes to operate an offset space station but does not seek to take advantage of the full-power, full interference protection option in § 25.262(b). In this case, we require the applicant to provide an interference analysis demonstrating that its proposed space station will not cause any more interference to adjacent 17/24 GHz BSS satellite networks than if it were at the Appendix F location from which it is offset.

30. *Section 25.140(c).* Section 25.140(c) of our rules requires 17/24 GHz BSS space stations to be designed to be compatible with other 17/24 GHz BSS space stations as close as four degrees away. As discussed above, however, full-power offset satellites are entitled to interference protection from adjacent space stations operating less than four degrees away. Accordingly, we modify § 25.140(c) of our rules to reflect this. We also modify this rule to clarify that operators seeking to operate at offset orbital locations, but at reduced powers and without full interference protection, must design their systems to be compatible with adjacent space stations at reduced orbital separations.

31. *Section 25.114(d)(17).* To facilitate processing, we adopt a new rule, § 25.114(d)(17), that requires applicants to indicate, in the narrative to their application, whether they propose to operate pursuant to § 25.262(b) of our rules. Given the different classes of 17/24 GHz BSS space stations, *e.g.,* full-power Appendix F space station, full-

power offset space station, reduced-power Appendix F space station, and reduced-power offset space station, requiring applicants to state explicitly that they seek to operate a full-power space station with full interference protection will expedite staff review of the application.

32. *Other rule changes.* We make a number of other rule changes to correct cross-references to rule sections changed by this *Reconsideration Order* and to add cross-references to new rules, as appropriate. Accordingly, we revise the application filing requirements in § 25.114(d)(7) to require applicants to include the interference analysis described in new rule §§ 25.140(b)(3), (b)(4), (b)(5), or (b)(6), as appropriate for their circumstances. We also remove the version of § 25.114(d)(15)(iii) that was adopted in the *Report and Order* as the showing that was required by that rule is now incorporated into § 25.140 of the rules.

33. In the *Report and Order,* we decided to treat all pending applications as simultaneously filed under § 25.158(d) of our rules. We also recognized that all applicants will need to amend their pending applications to comply with the new 17/24 GHz BSS rules. Thus, we directed the International Bureau to release a Public Notice after the effective date of the new rules, inviting applicants to file conforming amendments and to consider those applications that are accepted for filing together. The Bureau would then process and grant those applications, provided that the applicant was otherwise qualified. In the event two or more applicants requested authority to operate at the same orbital location, we directed the Bureau to consider the applications concurrently and, if the applicants were qualified, to license them to operate in an equal portion of the spectrum. We will continue to follow this approach. Nevertheless, as the result of the modifications to the orbital spacing framework we adopt here, we implement an additional processing step under which we will permit certain applicants an opportunity to amend their applications for a second time. Adding this additional step does not change our decision to treat the pending applications as simultaneously filed under § 25.158(d).

34. Specifically, we recognize that some current applicants may wish to take advantage of the flexibility to operate full-power offset satellites. These applicants will not know, however, when filing their initial amendments, whether another existing applicant will request authority to operate a satellite at an adjacent Appendix F location. If we grant the Appendix F request, we will not be in a position to grant the application to operate at full power at the offset location. In these situations, denying the application for the offset location or requiring the licensee to operate at reduced powers would unfairly penalize the applicant for not correctly anticipating another applicant's filings. Consequently, in cases where an application for authority to operate at an offset location at full power conflicts with an application for an Appendix F location, we will permit the offset applicant a second opportunity to amend its application. The full-power offset applicant may change the orbital location to the Appendix F orbital location from which it was offset or may remain at the offset location at reduced power and with reduced interference protection.

35. To implement this decision, we direct the Bureau to release a Public Notice shortly after these rules become effective, inviting current applicants to amend the applications pending as of the date of this Order consistent with the rules we adopt today. We further direct the Bureau to dismiss, as defective, any application that is not amended by the date specified in the Public Notice. These applicants can amend their choice of orbital locations consistent with the modifications adopted today. Applicants must specify in the narrative portion of their application the type of authorization being sought, *e.g.*, an authorization to operate at an Appendix F location, an authorization to operate at a full-power offset location, or an authorization to operate at an offset location at reduced power and without full interference protection. Applicants seeking to operate at an offset location must specify the Appendix F location from which they propose to be offset. Applicants must provide the appropriate technical showing to support the request.

36. Any applicant proposing a full-power offset space station that conflicts with an application for an adjacent Appendix F space station will have thirty days after the deadline for amended applications discussed in the preceding paragraph to amend its application as discussed above. No other applicants will be permitted to file second amendments. In this regard, each applicant bears the burden of discerning, through the Bureau's electronic filing system, other potentially conflicting applications after the first deadline for amended applications.

37. Once the two deadlines for filing amendments have passed, the Bureau will review the amended applications to determine whether they are substantially complete and acceptable for filing. The Bureau will place acceptable applications on public notice. The Bureau will dismiss as defective any amended applications that are not substantially complete. In the event that two or more amended applications are filed at a single Appendix F location or its associated offsets, we direct the Bureau to consider the applications together and, if the applicants are qualified, to license them to operate in an equal portion of the spectrum. For example, if Applicant A requests authority to operate at the Appendix F location of 91° W.L. and Applicant B seeks authority to operate either a full-power offset or reduced-power offset from 91° W.L. at 92° W.L., the Bureau would consider these applications together. In this example, if the applications are substantially complete and the applicants are qualified, the Bureau would license each applicant in an equal portion of spectrum. Thus, for purposes of determining whether the spectrum should be split, the Appendix F location and any offset from a particular Appendix F location are considered the same orbital location.

38. In the *Report and Order,* we decided to treat future applications for 17/24 GHz BSS space stations under a first-come, first-served procedure. We will continue to follow this approach. Given our decision in this *Report and Order* to award licenses for offset space stations with full power and interference protection, we provide further clarification here as to how the first-come, first-served procedure will work.

39. Initially, we note that the freeze on new applications established in the *Report and Order* remains in effect. Once we lift the freeze, applicants may file applications for new 17/24 GHz BSS space stations. We will consider these applications on a first-come, first-served basis. This means that we will grant the application if the applicant is qualified and the proposed space station is not technically incompatible with any licensed space station or a space station proposed in a previously-filed application. For example, if we have authorized a full-power offset space station to a particular offset location, we will deny, as technically incompatible, an application for authority to operate a full-power space station at the adjacent Appendix F location. We would, however, grant the Appendix F application if the applicant is otherwise

qualified, proposes to operate the Appendix F space station at reduced power, and demonstrates that the proposed operations will not interfere with those of the full-power offset space station. Further, we would consider granting an application for a full-power space station at an Appendix F location if the adjacent offset operator is authorized to operate at reduced power only and without interference protection.

40. We also recognize that additional 17/24 GHz BSS orbital locations may become available as licensees decide to surrender licenses or lose their licenses for failure to meet the required implementation milestones. Where we do not issue an Order cancelling the license, we will announce the cancellation through a Public Notice. As is our custom, once the Order or Public Notice has been issued, applicants may file applications for new space stations, modification applications for licensed space stations, or amendments to pending applications that take the cancellation into account. Thus, if a license for a space station at an Appendix F location is cancelled, the licensee of an adjacent offset location space station authorized to operate at reduced power and without full interference protection may file a modification application to increase the power and receive full interference protection. Similarly, another applicant may apply for a license for a new space station at the Appendix F location. As with all applications processed under a first-come, first-served framework, processing will be governed by the applicant's position in the processing queue. Thus, if the modification request to increase power on an offset space station is filed first, and the applicant is qualified, we will grant it; if the application for a new space station at the Appendix F location is filed first, and the applicant is qualified, we will grant that application. In this manner, we will maintain an interference-free operating environment for 17/24 GHz BSS space stations, while still providing licensees the opportunity to design their satellite networks to best serve their customers.

41. *Conclusion.* With this Order, we provide additional flexibility to 17/24 GHz BSS space station operators by allowing them, under certain circumstances, to operate their space stations at full power and with full interference protection at locations other than those specified in Appendix F to the *Report and Order*. We find that this approach best addresses applicants' concerns regarding the compatibility of 17/24 GHz BSS orbital locations with the existing DBS infrastructure. We emphasize that this approach provides the same advantages to both current and future 17/24 GHz BSS applicants. This additional flexibility will also allow for an orbital assignment framework that is better aligned with applicants' business plans and existing infrastructure and will thus afford operators the greatest opportunity to provide expanded DTH service using a single multiple-feed antenna.

42. As required by the Regulatory Flexibility Act (RFA), the Commission issued a Final Regulatory Flexibility Analysis (FRFA) in the *Report and Order* in this proceeding. None of the rule revisions adopted by the Commission in this *Sua Sponte Reconsideration Order* affect the analysis in the *Report and Order*. We therefore incorporate by reference the Commission's prior regulatory flexibility analysis. The Commission will provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA.

43. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this *Order on Reconsideration* is adopted.

44. *It is further ordered* that part 25 of the Commission's rules is amended as set forth in Appendix A. An announcement of the effective date of these rule revisions will be published in the **Federal Register**.

45. *It is further ordered* that the International Bureau is delegated authority to issue Public Notices consistent with this *Order on Reconsideration*.

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Order on Reconsideration,* including the final regulatory flexibility act certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 *U.S.C. 601, et seq.* (1981).

47. *It is further ordered* that the Commission shall send a copy of this *Order on Reconsideration* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 to read as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Amend § 25.114 by revising paragraphs (d)(7) and (d)(15), and by adding paragraph (d)(17) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(7) Applicants for authorizations for space stations in the fixed-satellite service must also include the information specified in §§ 25.140(b)(1) and (2) of this part. Applicants for authorizations for space stations in the 17/24 GHz broadcasting-satellite service must also include the information specified in § 25.140(b)(1) and §§ 25.140(b)(3), (b)(4), (b)(5), or (b)(6) of this part.

* * * * *

(15) Each applicant for a space station license in the 17/24 GHz broadcasting-satellite service shall include the following information as an attachment to its application:

(i) Except as set forth in paragraph (d)(15)(ii) of this section, an applicant proposing to operate in the 17.3–17.7 GHz frequency band, must provide a demonstration that the proposed space station will comply with the power flux density limits set forth in § 25.208(w) of this part.

(ii) In cases where the proposed space station will not comply with the power flux density limits set forth in § 25.208(w) of this part, the applicant will be required to provide a certification that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power flux densities. The affected parties with whom the applicant must coordinate are those GSO 17/24 GHz

BSS satellite networks located up to ±6° away for excesses of up to 3 dB above the power flux-density levels specified in § 25.208(w) of this part, and up to ±10° away greater for excesses greater than 3 dB above those levels.

(iii) An applicant proposing to provide international service in the 17.7–17.8 GHz band must demonstrate that it will meet the power flux density limits set forth in § 25.208(c) of this part.

* * * * *

(17) An applicant seeking to operate a space station in the 17/24 GHz broadcasting-satellite service pursuant to the provisions of § 25.262(b) of this part, at an offset location no greater than one degree offset from an orbital location specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, must submit a written request to that effect as part of the narrative portion of its application.

* * * * *

■ 3. Amend § 25.117 by adding paragraph (d)(2)(v) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(d) * * *

(2) * * *

(v) Any 17/24 GHz BSS space station operator whose license is conditioned to operate at less than the power level otherwise permitted by §§ 25.208(c) and/or (w) of this part, and is conditioned to accept interference from a neighboring 17/24 GHz BSS space station, may file a modification application to remove those two conditions in the event that the license for that neighboring space station is cancelled or surrendered. In the event that two or more such modification applications are filed, and those applications are mutually exclusive, the modification applications will be considered on a first-come, first-served basis pursuant to the procedure set forth in § 25.158 of this part.

* * * * *

■ 4. Amend § 25.140 by revising paragraphs (b)(2) and (b)(3), by adding paragraphs (b)(4), (b)(5), and (b)(6), and by revising paragraph (c) to read as follows:

§ 25.140 Qualifications of fixed-satellite space station licensees.

* * * * *

(b) * * *

(2) Except as set forth in paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) of this section, all applicants must provide an interference analysis to demonstrate the compatibility of their proposed system two degrees from any authorized space station. An applicant should provide details of its proposed r.f. carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis. (*See, e.g.*, appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service (available at address in Sec. 0.445)).

(3) Except as described in paragraph (b)(5) of this section, an applicant for a license to operate a 17/24 GHz BSS space station that will be located precisely at one of the 17/24 GHz BSS orbital locations specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, must provide an interference analysis of the kind described in paragraph (b)(2) of this section, except that the applicant must demonstrate the compatibility of its proposed network with any current or future authorized space station in the 17/24 GHz BSS that complies with the technical rules in this part and that will be located at least four degrees from the proposed space station.

(4) Except as described in paragraph (b)(5) of this section, an applicant for a license to operate a 17/24 GHz BSS space station that will not be located precisely at one of the nominal 17/24 GHz BSS orbital locations specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, must make one of the following showings:

(i) In cases where there is no previously licensed or proposed space station to be located closer than four degrees from the applicant's space station, and the applicant seeks to operate pursuant to § 25.262(b) of this part, the applicant must provide an interference analysis of the kind described in paragraph (b)(2) of this section, except that the applicant must demonstrate the compatibility of its proposed network with any current or future authorized space stations in the 17/24 GHz BSS that are operating in compliance with the technical rules of this part and that will be located at least four degrees from the applicant's proposed space station;

(ii) In cases where there is a previously licensed or proposed 17/24 GHz BSS space station to be located within four degrees of the applicant's proposed space station, the applicant must provide an interference analysis of the kind described in paragraph (b)(2) of this section, except that the applicant must demonstrate that its proposed network will not cause more interference to the adjacent 17/24 GHz BSS satellite networks operating in compliance with the technical requirements of this part, than if the applicant were located at the precise Appendix F orbital location from which it seeks to offset;

(iii) In cases where there is no previously licensed or proposed 17/24 GHz BSS space station to be located within four degrees of the applicant's proposed space station, and the applicant does not seek to operate pursuant to § 25.262(b) of this part, the applicant must provide an interference analysis of the kind described in paragraph (b)(2) of this section, except that the applicant must demonstrate that its proposed operations will not cause more interference to any current or future 17/24 GHz BSS satellite networks operating in compliance with the technical requirements of this part, than if the applicant were located at the precise Appendix F orbital location from which it seeks to offset.

(5) An applicant for a license to operate a 17/24 GHz BSS space station, in cases where there is a previously licensed or proposed space station operating pursuant to § 25.262(b) of this part located within four degrees of the applicant's proposed 17/24 GHz BSS space station, must provide an interference analysis of the kind described in paragraph (b)(2) of this section, except that the applicant must demonstrate that its proposed operations will not cause more interference to the adjacent 17/24 GHz BSS satellite network than if the adjacent space station were located four degrees from the applicant's space station.

(6) In addition to the requirements of paragraphs (b)(3), (b)(4), and (b)(5) of this section, the link budget for any satellite in the 17/24 GHz BSS must take into account longitudinal stationkeeping tolerances and, where appropriate, any existing orbital location offsets from the 17/24 GHz BSS orbital locations of the adjacent prior-authorized 17/24 GHz BSS space stations. In addition, any 17/24 GHz BSS satellite applicant that has reached a coordination agreement with an operator of another 17/24 GHz BSS satellite to allow that operator to exceed the pfd levels specified in the rules for this service, must use those higher pfd levels for the purposes of this showing.

(c) Operators of satellite networks using 17/24 GHz BSS space stations must design their satellite networks to be capable of operating with another 17/24 GHz BSS space station as follows:

(1) Except as described in paragraphs (b)(4)(ii) and (b)(4)(iii) of this section, all satellite network operators using 17/24

GHz BSS space stations must design their satellite networks to be capable of operating with another 17/24 GHz BSS space station as close as four degrees away.

(2) Satellite network operators located less than four degrees away from a space station to be operated pursuant to § 25.262(b) of this part must design their satellite networks to be capable of operating with that adjacent 17/24 GHz BSS space station.

(3) Satellite network operators using 17/24 GHz BSS space stations located at an orbital location other than those specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, and that are not operating pursuant to § 25.262(b) of this part, must design their satellite networks to be capable of operating with another 17/24 GHz BSS space station closer than four degrees away, as a result of the operator's offset position.

* * * * *

■ 5. Revise § 25.262 to read as follows:

§ 25.262 Licensing and domestic coordination requirements for 17/24 GHz BSS space stations.

(a) Except as described in paragraphs (b), (c) or (e) of this section, applicants seeking to operate a space station in the 17/24 GHz BSS must locate that space station at one of the orbital positions described in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76.

(b) An applicant may be authorized to operate a 17/24 GHz BSS space station at an orbital location described in Appendix F as set forth in paragraph (a) of this section, or at a location with a geocentric angular separation of one degree or less from an Appendix F location, and may operate at the maximum power flux density limits defined in §§ 25.208(c) and (w) of this part, without coordinating its power flux density levels with adjacent licensed or permitted operators, only if there is no licensed 17/24 GHz BSS space station or prior-filed application at a location less than four degrees from the offset orbital location at which the applicant proposes to operate.

(c)(1) Notwithstanding the provisions of this section, licensees and permittees will be allowed to apply for a license or authorization for a replacement satellite that will be operated at the same power level and interference protection as the satellite to be replaced.

(2) In addition, applicants for licenses or authority for a satellite to be operated at an orbit location that was made available after a previous 17/24 GHz BSS license was cancelled or surrendered will be permitted to apply for authority to operate a satellite at the same power level and interference protection as the previous licensee at that orbit location, to the extent that their proposed operations are consistent with the provisions of this part. Such applications will be considered pursuant to the first-come, first-served procedures set forth in § 25.158 of this part.

(d) Any U.S. licensee or permittee using a 17/24 GHz BSS space station that is located less than four degrees away from a prior-authorized 17/24 GHz BSS space station that is authorized to operate in accordance with paragraph (b) of this section:

(1) may not cause any more interference to the adjacent satellite network than would be caused if the adjacent 17/24 GHz BSS space station were located four degrees away from the proposed space station; and

(2) must accept any increased interference that results from the adjacent space station network operating at the offset orbital location less than four degrees away.

(e) Any 17/24 GHz BSS U.S. licensee or permittee that is required to provide information in its application pursuant to §§ 25.140(b)(4)(ii) or (b)(4)(iii) of this part must accept any increased interference that may result from adjacent 17/24 GHz BSS space stations that are operating in compliance with the rules for this service.

(f) Any 17/24 GHz BSS U.S. licensee or permittee that does not comply with the power flux-density limits set forth in § 25.208(w) of this part shall bear the burden of coordinating with any future co-frequency licensees and permittees of a 17/24 GHz BSS network under the following circumstances:

(1) If the operator's space-to-Earth power flux-density levels exceed the power flux-density limits set forth in § 25.208(w) of this part by 3 dB or less, the operator shall bear the burden of coordinating with any future operators proposing a 17/24 GHz BSS space station in compliance with power flux-density limits set forth in § 25.208(w) of this part and located within ±6 degrees of the operator's 17/24 GHz BSS space station.

(2) If the operator's space-to-Earth power flux-density levels exceed the power flux-density limits set forth in § 25.208(w) of this part by more than 3 dB, the operator shall bear the burden of coordinating with any future operators proposing a 17/24 GHz BSS space station in compliance with power flux-density limits set forth in § 25.208(w) of this part and located within ±10 degrees of the operator's 17/24 GHz BSS space station.

(3) If no good faith agreement can be reached, the operator of the 17/24 GHz BSS satellite network that does not comply with § 25.208(w) of this part shall reduce its space-to-Earth power flux-density levels to be compliant with those specified in § 25.208(w) of this part.

[FR Doc. E7–20971 Filed 10–23–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 071011590–7610–02]

RIN 0648–XD38

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of rescission of temporary rule and reopening of DAM zone to normal fishing operations.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces the rescission of temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations applied to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 841 nm^2 (2,885 km^2), southeast of Machias, Maine, for 15 days. The purpose of this action is to provide notice that an October 17, 2007 survey indicated that North Atlantic right whales (right whales) are no longer present in the Dynamic Area Management (DAM) zone; therefore, NMFS has rescinded the temporary restrictions on lobster trap/pot and anchored gillnet fishing gear and reopened the DAM zone to normal fishing operations.

DATES: The DAM zone and associated gear restrictions are removed effective October 19, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane

Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On October 5, 2007, an aerial survey reported an aggregation of three right whales in the proximity of 44° 15′ N latitude and 67° 11′ W longitude. The position lies approximately 30nm south of Machias, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS had received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibited lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it was modified in the manner described in the temporary rule (72 FR 59035).

The DAM Zone is bound by the following coordinates:

44° 35′ N., 67° 33′ W (NW Corner)

44° 35′ N., 67° 01′ W and follow the EEZ south to

43° 56′ N., 67° 22′ W

43° 56′ N., 67° 41′ W

44° 32′ N., 67° 41′ W and follow the coastline north to

44° 35′ N., 67° 33′ W (NW Corner)

The restrictions were to be in effect from 0001 hours October 20, 2007, through November 3, 2007, unless terminated sooner or extended by NMFS through another modification in the **Federal Register**. The restrictions were announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

A subsequent survey of the full DAM zone occurred on October 17, 2007, and indicated that right whales have left the designated DAM zone triggered on October 5, 2007. Based on this information and pursuant to the authority found at 50 CFR 229.32(g)(3)(vi), NMFS has rescinded the restrictions on lobster trap/pot and anchored gillnet fishing gear that were to become effective on October 20, 2007. Pursuant to these regulations, lobster trap/pot and anchored gillnet fishing may continue in the area effective October 19, 2007. The rescission of restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

The AA finds that it would be impracticable and contrary to the public interest to provide prior notice and an opportunity for public comment on this action. To meet the goals of the DAM program, the agency needs to be able to reopen a DAM zone and rescind restrictions on fishing gear as soon as possible once NMFS determines that right whales are no longer in the area. The regulations establishing the DAM program are designed to enable the agency to help protect unusual and unexpected foraging concentrations of right whales. On the other hand, if subsequent surveys indicate that the animals are no longer foraging in that area, the agency needs to be able to reopen the DAM zone as soon as possible to allow fishing operations to resume in that location because right

whales are no longer at risk in that particular DAM zone. If NMFS were to provide prior notice and an opportunity for public comment upon the reopening of a DAM restricted zone, the fishermen would continue to endure unnecessarily adverse economic impacts because right whales the DAM zone was implemented to protect had moved on to another location, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to reopen a DAM restricted zone to commercial lobster trap/pot and anchored gillnet gear.

For the same reasons, the AA finds good cause to waive the 30–day delay in effectiveness for action. If NMFS were to delay for 30 days the effective date of this action, the anchored gillnet and lobster trap/pot fishermen affected by the DAM zone would be required to comply with restrictions even though subsequent surveys of the area indicated that right whales have moved to another location, thereby rendering the action obsolete and unnecessary for reducing the risk of entanglement of endangered right whales in that area. NMFS recognizes the need for fishermen to resume normal fishing operations in a DAM zone once subsequent surveys or other credible evidence incidates that right whales have left the vicinity. Thus, NMFS makes this action effective on the date of filing of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: October 18, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries service.

[FR Doc. 07–5247 Filed 10–19–07; 2:20 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02]

RIN 0648–XD40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Opening of the Eastern U.S./Canada Area and Trip Limit Change

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening and trip limit change.

SUMMARY: NMFS announces a temporary reopening of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock Special Access Program (SAP), to limited access NE multispecies days-at-sea (DAS) vessels through November 30, 2007. This action also implements a 1,000–lb (454–kg) trip limit for Georges Bank (GB) cod for all limited access NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area. This action is being taken to allow NE multispecies DAS vessels increased access to the substantial Eastern U.S./Canada Area GB haddock total allowable catch (TAC), and provide increased opportunities to achieve optimum yield in the groundfish fishery. The intended effect is to maximize the utility of the remaining GB cod TAC by opening the Eastern U.S./Canada Area when the relative abundance of GB haddock in relation to GB cod is highest.

DATES: The temporary reopening of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, to all limited access NE multispecies DAS vessels and the 1,000–lb (454–kg) GB cod trip limit for the Eastern U.S./Canada Area is effective 0001 hr October 20, 2007, through 2400 hr local time, November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The GB cod TAC for the 2007 fishing year (FY) was specified at 494 mt on May 7, 2007 (72 FR 25709). The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify the gear requirements, modify or close access, modify the trip limits, or modify the total number of trips into the U.S./Canada Management Area, for all limited access NE multispecies DAS vessels to prevent over-harvesting or to facilitate achieving the U.S./Canada Management Area TACs.

On June 20, 2007, NMFS temporarily closed the Eastern U.S./Canada Area to all NE multispecies DAS vessels because of the substantial increase of fishing activity in the Eastern U.S./Canada Area beginning June 1, 2007, and the small GB cod TAC. The temporary closure was necessary in order to prevent the closure of the Eastern U.S./Canada Area through the end of FY 2007, on April 30, 2007. A closure for the remainder of FY 2007 would have limited access to the available Eastern U.S./Canada Area GB haddock TAC.

Particularly concerning at the time of the temporary closure was the high proportion of GB cod being discarded by vessels targeting GB haddock and GB yellowtail flounder. Observer data showed that discards of GB cod exceeded the amount of GB cod kept, with a discard to kept ratio for GB cod of approximately 2:1. When the Eastern U.S./Canada Area closed on June 20, 2007, a total of 70.1 percent of the GB cod TAC had been harvested, leaving

20.9 percent of the GB cod TAC available for harvest during the remainder of FY 2007. Analysis of GB cod landings from the Eastern U.S./Canada Area for fishing years 1999 through 2003 (the most recent years the area was not subject to in-season management) shows that GB cod are proportionally less abundant than co-occurring GB haddock during the months of October and November than in other months. Therefore, reopening the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, through the month of November will allow NE multispecies DAS vessels increased access to the substantial Eastern U.S./Canada Area GB haddock TAC, and provide increased opportunities to achieve optimum yield in the groundfish fishery. Data indicate that reopening the Eastern U.S./Canada Area through November with a 1,000–lb (454–kg) GB cod trip limit will not likely result in the overharvest of the GB cod TAC. The 1,000–lb (454–kg) Gb cod trip limit is consistent with the trip limit for the SAP and is intended to discourage the targeting of GB cod.

Therefore, based on the historical seasonal stock abundance data and the available GB cod TAC, and pursuant to the regulations at § 648.85(a)(3)(iv)(D), effective 0001 hr October 20, 2007, through 2400 hr local time, November 30, 2007, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, is open to all NE multispecies DAS vessels and the GB cod possession limit for all NE multispecies vessels fishing in the Eastern U.S./Canada Area is 1,000 lb/trip (454–kg/trip). GB cod landings will continue to be monitored through VMS and other available information. If 100 percent of the TAC allocation for GB cod is projected to be harvested prior to the end of November, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, will be closed to all NE multispecies DAS vessels for the remainder of the fishing year (i.e., through April 30, 2008).

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action relieves a restriction by opening the Eastern U.S./Canada Area, including the Eastern U.S./Canada Area Haddock SAP, to all NE multispecies DAS vessels through November 30, 2007, to allow access to the substantial GB haddock TAC (6,270 mt).

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Management Area TACs. It is important to take this action immediately because GB cod, which has a relatively small TAC (494 mt), are proportionally less abundant than co-occurring GB haddock during the months of October and November than in either prior or subsequent months. Any delay in the implementation of this action would decrease the opportunity available for vessels to selectively target haddock in the Eastern U.S./Canada Area while cod bycatch rates are expected to be low. Once the GB cod TAC is achieved, the regulations require the closure of the Eastern U.S./Canada Area for the remainder of FY 2007, preventing access to the GB haddock TAC. This action is being taken at this time to take advantage of the seasonal variation of relative stock abundance in order to allow access to the abundant GB haddock stock with minimized GB cod bycatch.

The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action, preventing NE multispecies DAS vessels from efficiently targeting GB haddock in the Eastern U.S./Canada Area when GB haddock can be targeted with minimal bycatch of GB The Regional Administrator's authority to open and close this area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 and FW 42. Further, the potential of reopening of the Eastern U.S./Canada Area was announced to the public at closure of the Eastern U.S./Canada Area in June. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 18, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–5246 Filed 10–19–07; 2:20 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0612242903–7445–03; I.D. 112006I]

RIN 0648–AU48

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Bering Sea and Aleutian Islands Management Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting a final rule that appeared in the **Federal Register** on September 4, 2007. The final rule implemented Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) as partially approved by NMFS, and implemented recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 85 modified the current allocations of Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch, and seasonal apportionments thereof, among various harvest sectors. The final rule also included the congressionally mandated increase in the allocation of BSAI Pacific cod to the Community Development Quota (CDQ) Program.

DATES: Effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228 or *becky.carls@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

A final rule published on September 4, 2007 (72 FR 50788), implemented Amendment 85 to the FMP by modifying the current allocations of BSAI Pacific cod total allowable catch (TAC) among various harvest sectors and seasonal apportionments thereof. The rule also established a hierarchy for reallocating projected unharvested amounts of Pacific cod from certain sectors to other sectors, revised catcher/processor (CP) sector definitions, modified the management of Pacific cod incidental catch that occurs in other groundfish fisheries, eliminated the Pacific cod nonspecified reserve, subdivided the annual prohibited

species catch (PSC) limits currently apportioned to the Pacific cod hook-and-line gear fisheries between the catcher vessel and CP sectors, and modified the sideboard restrictions for American Fisheries Act (AFA) CP vessels. In addition, the rule increased the percentage of the BSAI Pacific cod TAC apportioned to the CDQ Program. That final rule is effective January 1, 2008.

After publishing the final rule to implement Amendment 85, NMFS published a separate final rule to implement Amendment 80 to the FMP on September 14, 2007 (72 FR 52668). Amendment 80 primarily allocated several BSAI non-pollock trawl groundfish fisheries among fishing sectors, facilitated the formation of harvesting cooperatives in the non-AFA trawl CP sector, and established a limited access privilege program for that sector. Most provisions of the Amendment 80 final rule were effective October 15, 2007.

Need for Corrections

Among other regulatory changes, the final rules implementing Amendment 80 and Amendment 85 modified current regulations under § 679.21(e) that concern PSC bycatch management. The regulatory changes made by the Amendment 85 final rule included a rearrangement of portions of § 679.21(e) to improve the organization of the regulations. The proposed rule for Amendment 85 published on February 7, 2007 (72 FR 5654), explained some of this reorganization on page 5668: ''The information in § 679.21(e)(1)(i) and (e)(2)(ii), concerning the reserves in the BSAI for the CDQ Program, would be moved to § 679.21(e)(3)(i)(A) and (e)(4)(i)(A) respectively. This regulatory text would be moved from the paragraphs allocating PSC by species, to the more appropriate location under the paragraphs making PSC apportionments to the various fishery categories.'' However, because Amendment 85 has a later effective date than Amendment 80, an unintended result of this reorganization is that some regulatory changes made by the Amendment 85 final rule will overwrite some regulatory changes made by the Amendment 80 final rule. Specifically, the final rule for Amendment 85 as published will remove regulatory text allocating prohibited species quota to CDQ groups, a reference to PSC cooperative quota assigned to Amendment 80 cooperatives, and paragraphs concerning Amendment 80 sector bycatch limitations.

The preservation of the new regulatory text approved under Amendment 80 in light of the non-substantive reorganization intended by Amendment 85 is the goal of this correction notice. In other words, the intent of the regulatory reorganization made by Amendment 85 was not to change the substance of existing regulations but to move and consolidate several existing regulatory provisions. Therefore, two paragraphs in the Amendment 85 final rule will be corrected to reflect new regulatory language approved under Amendment 80 and an instruction for § 679.21 will be inserted. First, the new regulatory text at § 679.21(e)(1)(i) resulting from Amendment 80 will become § 679.21(e)(3)(i)(A) under this action, with changes made to reflect the new cross-references. Second, the new regulatory text at § 679.21(e)(3)(i) resulting from Amendment 80 will become § 679.21(e)(3)(i)(B) under this action, with a heading added to the paragraph. Last, an instruction will be inserted to prevent the deletion of a new paragraph added at § 679.21(e)(3)(vi) by the Amendment 80 final rule.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and opportunity for public comment are unnecessary because the editorial changes made by this rule are non-substantive. Neither Amendment 85 nor Amendment 80 intended to remove regulations allocating a portion of the trawl gear PSC limits to the CDQ Program. This action will preserve regulatory language approved in the Amendment 80 final rule when the regulations approved under the Amendment 85 final rule become effective.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Correction

Accordingly, the final rule, FR Doc. E7–17140, published on September 4, 2007, at 72 FR 50788, to be effective January 1, 2008, is corrected as follows:

§ 679.21 [Corrected]

1. In § 679.21, on page 50817, columns 1 and 2, revise paragraphs (e)(3)(i)(A) and (B) to read as set forth below and in column 2, add five asterisks in between paragraphs (e)(3)(v) and (e)(4) to account for text not being amended.

§ 679.21 Prohibited species bycatch arrangement.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) *PSQ reserve.* The following allocations of the trawl gear PSC limits are made to the CDQ Program as PSQ reserves. The PSQ reserves are not apportioned by gear or fishery.

(*1*) *Crab PSQ.* 10.7 percent of each PSC limit set forth in paragraphs (e)(1)(i) through (iii) of this section.

(*2*) *Halibut PSQ.* (*i*) 276 mt of the total PSC limit set forth in paragraph (e)(1)(iv) of this section in each year for 2008 and 2009.

(*ii*) 326 mt of the total PSC limit set forth in paragraph (e)(1)(iv) of this section effective in 2010 and each year thereafter.

(*3*) *Salmon PSQ*—(*i*) *Chinook salmon.* 7.5 percent of the PSC limit set forth in paragraph (e)(1)(vi) of this section.

(*ii*) *Non-Chinook salmon.* 10.7 percent of the PSC limit set forth in paragraph (e)(1)(vii) of this section.

(B) *Fishery categories.* NMFS, after consultation with the Council and after subtraction of PSQ reserves and PSC CQ assigned to Amendment 80 cooperatives, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

* * * * *

Dated: October 19, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–20929 Filed 10–23–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 205
Wednesday, October 24, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–19]

William Stein, III, M.D.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–35–19) submitted by William Stein, III, M.D. (petitioner). The petitioner requested that the NRC amend the regulations that govern medical use of byproduct material concerning training for parenteral administration of certain radioactive drugs—samarium-153 lexidronam (Quadramet), iodine-131 tositumomab (Bexxar), and yttrium-90 ibritumomab tiuxetan (Zevalin)—used to treat cancer. The petitioner believes that these regulations are unduly burdensome for the use of these drugs. The petitioner requested that the regulations be amended to codify an 80-hour Laboratory and classroom, training and appropriate work experience, and written attestation as appropriate and sufficient for physicians desiring to attain authorized user status for therapeutic administrations of these unsealed byproduct materials.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, Public File Area Room O1F21, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking Web site.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: James R. Firth, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6628; e-mail: *jrf2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On June 14, 2006 (71 FR 34285), the NRC published a notice of receipt of a petition for rulemaking filed by William Stein, III, M.D. The petitioner requested that the NRC amend the regulations that govern medical use of byproduct material concerning training for parenteral administration of certain radioactive drugs—samarium-153 lexidronam (Quadramet), iodine-131 tositumomab (Bexxar), and yttrium-90 ibritumomab tiuxetan (Zevalin)—used to treat cancer. The petitioner believes that these regulations are unduly burdensome for the use of these drugs. The petitioner requested that the regulations be amended to codify an 80-hour training and experience requirement as appropriate and sufficient for physicians desiring to attain authorized user status for these unsealed byproduct materials.

The petitioner requested that the NRC amend Title 10 of the Code of Federal Regulation (CFR) part 35, ''Medical Use of Byproduct Material'' to recognize that 80 hours of classroom and laboratory training, supervised work experience, and a written attestation for physicians are adequate and sufficient to attain authorized user status for parenteral administrations of Quadramet, Bexxar, and Zevalin. The petitioner provided three options for addressing this issue.

(1) Add a specific requirement to 10 CFR part 35 that is essentially equivalent to the language in § 35.394, ''Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries),'' which governs oral administration of sodium iodide I–131 particularly with regard to the alternate pathway, but requires experience with at least three parenteral administrations of dosages to patients or human research subjects for each of these drugs.

(2) Add a separate requirement for Quadramet, Bexxar, and Zevalin similar to the training and experience codification for administration of sodium iodide I–131 to allow the NRC to evaluate each substance individually so all radioactive drugs can be handled appropriately from a radiation safety perspective.

(3) Revise 10 CFR 35.396, ''Training for the parenteral administration of unsealed byproduct material requiring a written directive,'' to specify an 80-hour classroom and laboratory training period, appropriate work experience, and a written attestation to apply to the alternate pathway for any physician, not limited to board-certified radiation oncologists. Specifically, remove the current § 35.396(c) and redesignate §§ 35.396(d)(1), (d)(2), and (d)(3) as §§ 35.396(c)(1), (c)(2), and (c)(3). The petitioner recognizes that the Commission may not agree with this change if other more hazardous parenterally-administered radiopharmaceuticals become available, necessitating the increased training currently specified in this requirement.

The petitioner stated that the training and experience requirements for physicians who seek authorized user status for parenteral administration of Quadramet, Bexxar, and Zevalin to treat certain cancers should reflect the current requirements in 10 CFR 35.394 and not those currently in 10 CFR 35.396. The petitioner noted that all administrations of Quadramet, Bexxar, and Zevalin require written directives and believes that these drugs are generally less hazardous than oral dosages of sodium iodide I–131. The petitioner therefore believes that the training and experience requirements should not exceed the 80 hours specified for an endocrinologist who treats thyroid disorders with oral dosages of sodium iodide I–131.

The petitioner stated that § 35.396 was published in the **Federal Register** on March 30, 2005 (70 FR 16336), as part of the final rule that amended training and experience requirements for administration of radiopharmaceuticals. The petitioner believes that the NRC's rationale for the

training and experience requirements in § 35.396 is not known and that an opportunity for public comment period was not provided for this provision before it appeared in the final rule. The petitioner also stated that the NRC has not considered codification of new drugs that require written directives as they become available for medical use and that there is an unmet regulatory need to address the ability of physicians to qualify for medical use authorization for certain unsealed byproduct materials that are currently commercially available and for which written directives are required.

The petitioner believes that users of radiopharmaceuticals should be subjected to training requirements according to potential radiation risk as is the case for oral administrations of I–131, rather than being lumped into a collective group, which the petitioner characterized as being the NRC's current practice. The petitioner believes that the current requirements are burdensome and deficient in this regard and that, without regulatory relief, physicians would be discouraged from providing these U.S. Food and Drug Administration (FDA)-approved and commercially available treatments resulting in an adverse impact on their ability to practice medicine. Under the current requirements, the petitioner believes that physicians would be required to become board-certified radiation oncologists under § 35.396 or complete 700 hours of training (including 200 hours of classroom and laboratory training) under § 35.390 to attain authorized user status to parenterally administer Quadramet, Bexxar, or Zevalin.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on August 28, 2006. As of July 27, 2007, the NRC had received 25 comment letters from individuals, State government agencies, and non-governmental organizations. In addition, the Advisory Committee on the Medical Uses of Isotopes (ACMUI) took a position on the arguments made in the petition.

The NRC received 18 comment letters that supported granting the petition or agreed with the conclusions of the petitioner. Fourteen of these letters were submitted by 29 physicians. Two letters were submitted by State government agencies, the Arkansas Department of Health and Human Services and the Alabama Department of Public Health. Two letters were submitted by three individuals. Most of the commenters supporting the petition submitted form letters, or comments that were otherwise similar to one another. In general, these commenters stated that not granting the petition would intrude into the practice of medicine, discourage physicians from treating patients, and establish barriers to the use of potentially effective therapies, thus adversely impacting patient access to these therapies and increasing health care costs. These commenters also believed that the activity administrations of Quadramet, Bexxar, and Zevalin are from a radiation safety perspective less hazardous than oral administration of sodium iodide I–131 for which the NRC requires only 80 hours of classroom and laboratory training.

The NRC received seven comment letters that opposed granting the petition. Two of these were submitted by physicians, one was submitted by a State government agency (i.e., the Iowa Department of Public Health), and four were submitted by non-governmental organizations (i.e., the American Association of Physicists in Medicine (AAPM), American College of Radiation Oncology (ACRO), American College of Radiology (ACR), and American Society for Therapeutic Radiology and Oncology (ASTRO)). In addition, at its October 24, 2006, meeting, the ACMUI passed a unanimous motion rejecting the arguments made by the petitioner.

In general, many of these commenters disagreed that there was a shortage of individuals capable of performing these treatments or that patients were unable to access these treatments. Many of these commenters also raised concerns that there would be radiation safety issues and patients would be exposed to additional risk if the petition was granted; e.g., that medical oncology/hematology training does not include the extensive background necessary for administering these radiopharmaceuticals and that significant knowledge regarding handling of these radiopharmaceuticals cannot be imparted with limited training. These commenters also asserted that the amount of training required was debated many times during the revisions to 10 CFR part 35 and the NRC made a deliberate decision that the level of training required to administer these and similar treatments must include 700 hours of training and experience to ensure public health and safety. These commenters also stated that the intent of the regulations was not to regulate ''radionuclide by radionuclide,'' but to have generally applicable rules to accommodate new agents.

Reasons for Denial

After reviewing the information provided in the petition, the comment letters, and the views of the ACMUI, the NRC is denying the petition. The NRC believes that the current NRC regulations at 10 CFR 35.390 and 35.396 establish the appropriate amount of training and experience for a physician to become an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive, including Quadramet, Bexxar, and Zevalin.

The decision to deny this petition is consistent with the NRC policy statement, ''Medical Use of Byproduct Material'' (65 FR 47654; August 3, 2000). The NRC indicated in its general statement of policy that ''NRC will, when justified by the risk to patients, regulate the radiation safety of patients, primarily to assure the use of radionuclides is in accordance with the physician's directions.'' In the discussion of public comments on the medical use policy statement, the NRC indicated that the regulations for the medical use of byproduct material are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interests of their patients. The training and experience requirements for the medical use of unsealed byproduct material requiring a written directive help to ensure that authorized users are properly trained and adequately informed.

The elements of the current training and experience requirements for the use of unsealed byproduct materials were established through two separate rulemakings. The first rulemaking, a major revision to 10 CFR part 35 (67 FR 20250; April 24, 2002), was intended to focus NRC's regulations on those medical procedures that pose the highest risk to workers, patients, and the public, and structure the regulations to be more risk-informed and performance-based. The second rulemaking (70 FR 16336; March 30, 2005) revised the 10 CFR part 35 requirements for the recognition of specialty boards whose certifications may be used to demonstrate the adequacy of the training and experience of individuals for the purpose of serving as authorized persons and certain training and experience requirements for pathways for authorized status other than by the board certification pathways. Both rulemakings involved extensive input from the medical community, Agreement States, and the public, and

afforded substantial opportunity for public comment.

During the 2002 revision to 10 CFR part 35, the NRC increased the required amount of training and experience from 80 hours to 700 hours for most medical uses of unsealed byproduct material requiring a written directive. The 700 hours spent in training provides assurance that physicians spend an adequate amount of time in an environment in which radioactive drugs are routinely being prepared and/or administered for medical use. In 2005, the NRC clarified that to properly cover the topics important for the safety for these uses, for the alternate pathway to authorized status, the minimum amount of classroom and laboratory training was 200 hours (see 70 FR 16336). In this connection, to achieve authorization via the board certification pathway, the individual must successfully complete multiple year residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty, each of which also includes 700 hours of training and experience as described in §§ 35.390(b)(1)(i) through (b)(1)(ii)(E) of the alternate pathway requirements. The required training is that considered appropriate for the purposes of radiation safety of workers, members of the public, and patients. The adequacy of the training of authorized users is an important contributor to radiation safety.

An important aspect of the NRC requirements for the medical use of byproduct material is the flexibility provided to medical practitioners. Medical use licensees have the flexibility to use radioactive drugs requiring a written directive for indications and methods of administration that are not listed in the FDA-approved package insert. These licensees are able to depart from the manufacturer's instructions for preparing radioactive drugs. Because of the flexibility offered to physicians, they are expected to have certain training, even if, for example, they choose not to exercise their flexibility, such as using only unit dosages.

The petitioner asserted, with regard to the requirements at 10 CFR 35.396, that the NRC's reasoning is not known and that no comment period was offered before this requirement appeared in the final rule. Concerning these assertions, the requirements at § 35.396 were established during the 2005 rulemaking and fully explained in the **SUPPLEMENTARY INFORMATION** accompanying the final rule. As explained in the final rule notice, the NRC established these requirements in the final rule in response to public comments on the proposed rule, published in the **Federal Register** on December 9, 2003 (68 FR 68549). The public comments expressed a concern that the training requirements in § 35.390 should consider the totality of all work experience for individuals trained in radiation oncology. As discussed in the **SUPPLEMENTARY INFORMATION** accompanying the final rule, the NRC agreed that certain physicians, such as those who meet the requirements for training and experience for uses under §§ 35.490 or 35.690, have a good understanding of radiation that includes topics common to the use of sealed sources and unsealed byproduct material. Therefore, the NRC included § 35.396 to provide a pathway to authorized status that allows individuals to take credit for training and experience associated with other medical uses of byproduct material that may be applicable to the use of unsealed byproduct material. To ensure that these individuals would have adequate training and experience to use unsealed byproduct material safely, the NRC requires that these individuals have training and experience applicable to the parenteral administration of unsealed byproduct material for which a written directive is required.

The petitioner also asserts that the administrations of Quadramet, Bexxar, and Zevalin are no more hazardous from a radiation safety perspective than the oral administration of sodium iodide I–131, and therefore the training and experience requirements for physicians treating their patients with these drugs should not exceed those for an endocrinologist treating thyroid disorders with oral sodium iodide I–131. The NRC has addressed the difference in the required number of hours of training and experience for the oral administration of sodium iodide I–131 requiring a written directive and other medical uses of unsealed byproduct material requiring a written directive in both the 2002 rulemaking and the 2005 rulemaking. When the proposed rule amending Part 35 was published in 1998 (63 FR 43516; August 13, 1998), the training and experience requirements then in existence pertaining to treatment of hyperthyroidism and thyroid carcinoma were deleted and were to be subsumed within the training requirements that applied to the use of unsealed material for which a written directive is required proposed in § 35.390. Under the proposed revision, individuals wishing to become authorized users of unsealed byproduct material for which a written directive is required (including the use of sodium iodide I–131 to treat hyperthyroidism and thyroid carcinoma) would have been required to obtain 40 hours of supervised practical experience at a medical institution, in addition to the 80 hours of didactic training which had been required by the prior regulations. This would have increased the amount of training and experience required for the use of sodium iodide I–131 to treat hyperthyroidism and thyroid carcinoma. However, as explained in the **SUPPLEMENTARY INFORMATION** accompanying the final rule, commenters were strongly opposed to the proposed changes to the requirements for the administration of sodium iodide I–131 for treatment of hyperthyroidism and thyroid cancer. These commenters indicated that the increased training was not warranted for these purposes in light of endocrinologists' impeccable safety record with the use of sodium iodide I–131 and the fact that there had been no records of therapeutic misadministrations of any byproduct material by endocrinologists, and that in reality most of the practical aspects of handling sodium iodide I–131 that would be covered in the proposed 40 hours of additional training were already covered in the 80 hours of didactic training and supervised clinical training.

The NRC considered these comments in making a determination that §§ 35.392 and 35.394 should be added in the final rule to specifically address oral administrations of sodium iodide I–131. These sections did not increase the duration of training for the oral administration of sodium iodide I–131 over the previous requirements for such use in §§ 35.932 and 35.934. However, with regard to all other uses of unsealed byproduct material for which a written directive is required, a specific determination was made to increase the training and experience requirements from 80 hours to 700 hours. The NRC made this determination after considering the potential for greater associated radiation risks of the use of these unsealed byproduct materials and the public comments received on the proposed rule (67 FR 20250; April 24, 2002).

Subsequently, during the revision made to the training and experience requirements in 2005, the NRC specifically determined not to change the existing requirements in §§ 35.390, 35.392, or 35.394. The **SUPPLEMENTARY INFORMATION** accompanying the final rule in 2005 notes that although the NRC continued to believe that the

increase in training and experience hours was generally necessary for physicians authorized under § 35.390, to qualify as an authorized user under the limited authorization of performing oral administration of sodium iodide I–131, a physician must have 80 hours of classroom and laboratory training and the specified supervised work experience. As noted in the **SUPPLEMENTARY INFORMATION** (70 FR 16336; March 30, 2005), the NRC based its determination on licensee use, NRC inspections, and experience with medical events reported after the effective date of the 2002 rule. The petitioner has not provided sufficient specific information that would warrant the NRC to reconsider this determination.

The petitioner has asserted that the training and experience requirements for the parenteral administration of unsealed byproduct material are unduly burdensome and that an entire class of physicians is unfairly discouraged from providing FDA-approved and commercially available treatments. The petitioner believes this results in an adverse impact on their ability to practice medicine and discourages medical oncologists/hematologists from providing these FDA-approved and commercially available treatments. The NRC is unaware of problems in Agreement States or non-Agreement States with patient access to these treatments that would indicate that the training and experience requirements represent an unnecessary burden. Neither the petitioner nor the commenters supporting the petition provided specific information or data supporting the assertion that there is a problem with patient access to these treatments resulting from unnecessarily burdensome requirements for training and experience. The training and experience requirements are intended to ensure that authorized users of byproduct material are properly trained and adequately informed. The NRC believes that the currently required amount of training and experience for the parenteral administration of unsealed byproduct material requiring a written directive is appropriate and does not represent an unnecessary burden.

The NRC notes that its requirements are not written to favor or penalize any class of physician (e.g., any physician can qualify as an authorized user for the oral administration of sodium iodide I–131), but are written to reflect the training necessary to ensure that authorized user physicians have adequate training. The alternate pathways for acquiring the training and experience necessary to become an authorized user were developed to provide physicians with a way to qualify for authorized user status, without having to acquire board certification or to have any particular specialty. Consequently, the NRC does not believe that medical oncologists/hematologists or any other class of physician are unfairly discouraged from becoming an authorized user or treating their patients.

The NRC's regulatory approach is intended to provide a flexible, risk-informed approach to the regulation of medical uses of byproduct material. In addition, the existing approach reduces the need to revise requirements for individual radiopharmaceuticals. The training and experience requirements for the medical use of byproduct material are a matter of strict compatibility between the NRC and the Agreement States and have been assigned Compatibility Category B. This means that Agreement States should adopt program elements essentially identical to those established by the NRC. In addition, training programs for candidates of the medical specialty boards may have to adapt their training programs to remain current with changes to NRC and Agreement State training and experience requirements. The current approach to training and experience for the medical use of unsealed byproduct material accommodates the introduction of new radiopharmaceuticals without requiring additional rulemaking, with its associated costs to the Agreement States. Attempting to tailor the training and experience requirements to specific uses of unsealed byproduct material and to the amount of flexibility that a user may wish to have would significantly increase the complexity of the regulatory oversight. The NRC does not believe that such added complexity would be of benefit to patients, the Agreement States, licensees, current and prospective authorized users, or the medical specialty boards.

The decision to deny the petition is consistent with the NRC strategic goals and strategies as described in the NRC Strategic Plan for fiscal years 2004 through 2009 (NUREG–1614). The training and experience requirements for the parenteral administration of unsealed byproduct material, including Quadramet, Bexxar, and Zevalin, do not present a significant regulatory impediment to the safe and beneficial use of these radioactive materials. In addition, the amount of classroom and laboratory training required to become an authorized user for the administration of these radiopharmaceuticals is necessary to protect public health and safety and the NRC regulations would not be improved by changing the requirements.

In conclusion, the NRC is denying the petition because the NRC has determined that the current requirements establish the appropriate amount of training and experience for a physician to become an authorized user for the parenteral administration of Quadramet, Bexxar, and Zevalin and that the NRC requirements do not impose an unnecessary regulatory burden for the use of Quadramet, Bexxar, Zevalin, and similar radiopharmaceuticals. The existing NRC regulations provide the basis for NRC to have reasonable assurance that public health and safety is adequately protected. Neither the petitioner nor the commenters supporting the petition have provided sufficient information such as would warrant the regulatory relief sought by the petitioner.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 5th day of October, 2007.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. E7–20918 Filed 10–23–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

[Docket No. PRM–63–2]

State of Nevada; Denial of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is denying a petition for rulemaking submitted by the State of Nevada (PRM–63–2). The petition requests that NRC amend its regulations for the proposed geologic repository at Yucca Mountain, Nevada (YM) to specify the limits of permissible spent fuel storage at the YM site. Petitioner believes that the U.S. Department of Energy (DOE) is planning to construct an Aging Facility at the YM site designed to store 21,000 metric tons of heavy metal in what petitioner believes is a manifest violation of the Nuclear Waste Policy Act of 1982, as amended, and the Commission's regulations. NRC is denying the petition because NRC's current regulations are

consistent with law and do not permit storage of spent nuclear fuel at the YM site unless such storage is integral to waste handling, necessary treatment, and disposal at the proposed repository, including storage which is integral to the thermal-loading strategy for disposal that DOE may include in its design of the entire repository system. DOE must make the case, in its anticipated license application, that any contemplated storage of spent nuclear fuel is permissible because it is integral to waste handling, necessary treatment, and disposal activities. NRC believes that, without an application currently before the agency, the issues raised by the petition are best addressed during the agency's review of the application when a final design will be available and an opportunity to request a hearing will be offered.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking and NRC's letter of denial to the petitioner may be viewed electronically on public computers in NRC's Public Document Room (PDR), 01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Publicly available documents created or received at NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: E. Neil Jensen, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1637 or Toll Free: 1–800–368–5642, e-mail: *enj@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On December 22, 2006, the State of Nevada (petitioner or the State) submitted a ''Petition for Rulemaking to Amend Part 63 to Clarify the Limits on Spent Fuel Storage at the Yucca Mountain Site'' (petition) which was docketed as a petition for rulemaking under 10 CFR 2.802 of the Commission's regulations (PRM–63–2) (available in the Agencywide Document Access and Management System (ADAMS) No. ML070030020). The State supplemented its petition by letter of January 23, 2007 (ML070330245). The petition requests amendments to 10 CFR part 63, NRC's regulations governing the disposal of high-level radioactive waste (HLW) in a proposed geologic repository at YM. The petitioner believes that 10 CFR part 63 must be amended to specify the limits of permissible spent fuel storage at YM, together with related changes to 10 CFR part 71.

Petitioner asserts that, at an August 29, 2006 technical exchange and management meeting between NRC and DOE, DOE indicated that its design for the geologic repository included both a ''Receipt Facility'' and an ''Aging Facility'' or ''Aging Pad''. (Meeting summary, ML062710597). The Receipt Facility would be designed to receive commercial spent nuclear fuel (SNF) from off-site and prepare it for the Aging Facility. The Aging Facility would be designed to store 21,000 metric tons of heavy metal (MTHM) on the YM site. See DOE, Office of Civilian Radioactive Waste Management, *Surface Facilities Overview and Canister Receipt and Closure Facility,* slides presented to NRC/DOE Technical Exchange and Management Meeting on Design Changes Approved Through DOE's Critical Decision (CD–1) Process, August 29, 2006, Las Vegas, Nevada (DOE slides) (ML062510423). Petitioner further asserts that, in an NRC Staff response to the State's letter asking about what surface storage of SNF might be allowed at YM under the Nuclear Waste Policy Act of 1982, as amended (NWPA), 42 U.S.C 10101 *et seq.*, and 10 CFR Part 63, NRC stated that surface storage is permissible ''to the extent such storage is integral to waste handling and disposal at the proposed repository,'' and that ''storage may also be integral to the thermal-loading strategy the applicant may adopt in its design of the entire repository system.'' See Letter to Robert R. Loux from Jack R. Strosnider, December 4, 2006 (ML062900384).

Petitioner believes that it is unclear why a thermal loading strategy must necessarily require the storage of significant quantities of SNF on the YM site and holds that ''it is absurd to suppose that storage in capacities approaching anywhere near 21,000 MTHM on the Site could be justified as part of a 'thermal loading' strategy that 'is integral to waste handling and disposal.'' Petition at 1. Further, petitioner supplemented its petition to state that DOE's preliminary specifications for a transportation, aging and disposal (TAD) canister system suggest that DOE is planning on long-term storage of SNF at YM. See DOE, Office of Civilian Radioactive Waste Management, *Civilian Radioactive Waste Management System: Preliminary Transportation, Aging and Disposal Canister System Performance Specification, Revision A,* DOE/RW–0585, November 2006 (DOE Performance Specification) (Licensing Support Network No. DN20023585505).

Petitioner believes that DOE's plans for an Aging Facility that could contain 21,000 MTHM are ''manifestly unlawful'' and requests that NRC amend 10 CFR part 63 to specify by rule the limits of permissible spent fuel storage at YM, together with related changes to 10 CFR part 71. As support for its petition, the State provides an analysis of provisions of the NWPA which demonstrate, in petitioner's view, that storage of SNF at YM is unlawful. In brief, petitioner argues that the structure and text of the NWPA show that Congress intended the repository to be for disposal only. This is because Congress provided for a repository for disposal of SNF in Subtitle A of the statute, but separately provided for a limited interim storage program in Subtitle B and for potentially longer term storage in a monitored retrievable storage facility (MRS) in Subtitle C. Both Subtitle B and Subtitle C contain provisions which would effectively prevent storage in a state being considered for a repository. Petitioner points out that ''if Congress had intended a repository site to be used for storage, neither Subtitle B nor Subtitle C would have been necessary, and the statutory prohibition on co-location of a repository and an interim storage facility or MRS would have been nonsensical.'' Petition at 3. Thus, petitioner concludes, the structure of NWPA demonstrates that a repository is for disposal only.

Petitioner requests three changes to NRC's rules. First, 10 CFR 63.21(c)(22) (regarding the contents of the license application) would be amended to add a new paragraph viii at the end:

> viii. Plans for the emplacement of spent nuclear fuel in the underground facility within a reasonably short time after it is received (in no event longer than one year), and information to explain why any facilities for the storage of spent nuclear fuel in the repository operations area or on the Site are integral to safe waste handling and disposal in the underground facility.

Second, 10 CFR 63.41(b) (regarding required license conditions) would be amended to add a new subsection (c):

> (c). The license shall include additional conditions as follows: (1) No spent nuclear

fuel may be received in the geologic repository operations area, or on the Site, unless there is reasonable assurance that it can be moved into the underground facility within a reasonably short time (in no event later than one year after receipt); (2) no spent nuclear fuel may be stored in the geologic repository operations area, or on the Site, unless such storage is necessary for the safe and efficient emplacement of spent fuel in the underground facility; and (3) no spent nuclear fuel may be stored in the geologic repository operations area, or on the Site, for the purpose primarily of aging (cooling or radioactive decay) prior to emplacement in the underground facility. The foregoing conditions do not preclude the construction of storage space to allow retrieval of spent fuel after its emplacement in the underground facility or for the amelioration of emergency conditions associated with the repository's operation.

Third, to ensure proper coordination between DOE and reactor licensees desirous of sending spent fuel to the repository, 10 CFR 71.5 would be amended by adding a new subsection (c):

(c). No licensee possessing spent reactor fuel may deliver the fuel to the Department of Energy or to a carrier for transport to Yucca Mountain, or transport the fuel to Yucca Mountain, unless the fuel either complies with waste disposal criteria (including thermal loading criteria) approved by the Commission, or the fuel is expected to do so within one year after receipt at the Yucca Mountain site. In complying with this subsection, a licensee may rely on compliance certifications provided by the Department of Energy.

Reasons for Denial

Petitioner recognizes that NRC's regulations are currently in harmony with its view of what storage is permissible:

In the preamble to the original Part 63, NRC stated that no license to receive waste or spent fuel would be issued until NRC is able to find that DOE has completed construction of sufficient underground storage space for initial operations, and it concluded that Part 63 does not allow early use of surface facilities for storage of spent fuel. 66 FR 55738 (November 2, 2001). This is consistent with the text of 10 CFR 63.41(a)(1), which provides that no license may be issued until NRC finds that construction of ''[a]ny underground storage space required for initial operation [is] substantially complete.'' Thus, NRC's regulations appear consistent with NWPA in eliminating the possibility of spent fuel storage that is decoupled from actual repository operations and logistics.

Petition at 4, n.3. Indeed, NRC recently reaffirmed this interpretation of its regulations when it informed petitioner that surface storage of spent fuel is only permissible, under 10 CFR part 63, to the extent such storage is integral to waste handling and disposal at the proposed repository (including storage which is integral to the thermal-loading strategy the applicant may adopt in its design of the entire repository system). See NRC Staff Letter of December 4, 2006. In the preamble to NRC's final rule incorporating 10 CFR part 63 into its regulations, the Commission stated:

The DOE has not indicated to the Commission any intention to seek an authorization for early use of the surface facilities for storage of spent nuclear fuel. Such an authorization likely would necessitate a change to (or an exemption from) the regulations. Before NRC would make changes of this type to its regulations, NRC would need to publish the proposed changes and seek public comment (66 FR 55738; November 2, 2001).

These statements make it clear that the Commission does not regard its regulations as sanctioning the type of spent fuel storage imagined by petitioner; i.e., storage of large amounts of spent nuclear fuel on an Aging Pad divorced from waste handling, necessary treatment, and disposal operations.

Petitioner's concern about DOE's supposed intent to construct a ''gigantic'' Aging Facility in violation of law apparently stems from information exchanged between DOE and NRC at the August 29, 2006 NRC/DOE Technical Exchange and Management Meeting. The DOE slides presented design changes that DOE had approved for the repository, including the preliminary hazards analysis (PHA) performed as part of DOE's process for approving design changes. The radiological consequence analysis of the PHA was based on key assumptions with respect to source terms, site weather and the location of workers and members of the public. One of these assumptions was an assumption of aging pads at full capacity which was identified as being 21,000 MTHM. However, assumptions used in a hazards analysis are not the equivalent of an actual plan for SNF storage. Petitioner also cites DOE's draft Performance Specification for a TAD canister system in support of its claim that DOE is planning for ''an illegal Yucca aging pad.'' This document explains, *inter alia,* that a TAD canister may be aged in an aging overpack which is used to safely contain a loaded TAD canister on the aging pad until repository emplacement thermal limits are met and that it could take a long period of time (years) for sufficient radioactive decay to take place. Clearly, this document suggests that DOE plans to age some amount of spent nuclear fuel for some period of time on an aging pad at the repository but it provides no information on the actual amount or length of time nor explanation as to how whatever DOE is planning complies with 10 CFR 63.41(a). This information should be part of DOE's license application and will be subject to review by the NRC staff.

As stated in NRC Staff's December 4, 2006 letter, ''NRC fully expects that DOE would seek authorization for a facility that complies with Federal law. If the application includes an aging facility, the NRC staff would review that facility in the context of the overall repository design to determine if it is integral to waste handling and disposal at the proposed repository * * *.'' Precisely what amount of spent nuclear fuel would meet that test, and precisely what amount of time can be justified, is an issue best resolved in the licensing proceeding. DOE's technical rationale supporting its intended use of the Aging Pad is dependent upon the actual repository design DOE intends to implement and will not be fully known until DOE submits its license application. DOE's design will be subject to scrutiny by the NRC staff in the licensing proceeding. Potential parties to the adjudicatory proceeding may seek to raise contentions on this issue if, in their view, DOE's case does not meet NRC's regulations.

Conclusion

In sum, NRC's rules already bar storage of SNF at the repository which is not integral to waste handling, necessary treatment, and disposal operations. The Commission believes that, without an application currently before the agency, the issues raised by the petition are best addressed during the agency's review of the application when a final design will be available and an opportunity to request a hearing will be offered.

For these reasons, the Commission denies PRM–63–2.

Dated at Rockville, Maryland, this 18th day of October 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–20919 Filed 10–23–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29138; Directorate Identifier 2007–CE–073–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R and 172S Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 172R and 172S. This proposed AD would require you to inspect the fuel return line assembly for chafing; replace the fuel return line assembly if chafing is found; and inspect the clearance between the fuel return line assembly and both the right steering tube assembly and the airplane structure, adjusting as necessary. This proposed AD results from reports of chafed fuel return line assemblies, which were caused by the fuel return line assembly rubbing against the right steering tube assembly during full rudder pedal actuation. We are proposing this AD to detect and correct chafing of the fuel return line assembly, which could result in fuel leaking under the floor and fuel vapors entering the cabin. This condition could lead to fire under the floor or in the cabin area.

DATES: We must receive comments on this proposed AD by December 24, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006.

FOR FURTHER INFORMATION CONTACT: Trenton Shepherd, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; fax: (316) 946–4107; e-mail: *trent.shepherd@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–29138; Directorate Identifier 2007–CE–073–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

We have received four reports of fuel return line assembly chafing in Cessna Models 172R and 172S airplanes. The reports indicated the fuel return line assembly rubbed against the right steering tube assembly during full rudder pedal actuation and caused the chafing.

This condition, if not corrected, could result in fuel leaking under the cabin floor and fuel vapors entering the cabin. This condition could lead to fire under the floor or in the cabin area.

Relevant Service Information

We have reviewed Cessna Mandatory Service Bulletin SB07–28–01, dated June 18, 2007. The service information describes the following procedures:

- Inspecting the fuel return line assembly;
- Replacing the fuel return line assembly if chafing is found; and
- Inspecting the clearance between the fuel return line assembly and both the right steering tube assembly and the airplane structure, adjusting as necessary.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to detect and correct chafing of the fuel vent line assembly.

Differences Between This Proposed AD and the Service Information

The service information permits tube damage up to a depth of 0.0035 inch. There is no known method to accurately measure the thickness damage on a tube. We propose to require replacement of the fuel return line assembly if any damage is found.

If no chafing is found in the inspection of the fuel return line assembly, the service information does not require inspection for clearance around the fuel return line assembly. We propose to inspect the clearance between the fuel return line assembly and both the right steering tube assembly and airplane structure, for all applicable aircraft.

The service information does not specify a minimum clearance requirement between the fuel return line assembly and the right steering tube assembly, only that the fuel return line assembly does not touch either the right steering tube assembly or the airplane structure. We propose to require a minimum of 0.5 inch of clearance between the fuel return line assembly and both the right steering tube assembly and the airplane structure, during full rudder pedal actuation.

The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 928 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	N/A	$80	$74,240

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
0.5 work-hour × $80 per hour = $40	$123	$163

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Cessna Aircraft Company: Docket No. FAA–2007–29138; Directorate Identifier 2007–CE–073–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by December 24, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial No.
172R	17281188 through 17281390.
172S	172S9491 through 172S10489.

Unsafe Condition

(d) This AD results from reports of chafed fuel return line assemblies caused by the fuel return line assembly rubbing against the right steering tube assembly during full rudder pedal actuation. We are issuing this AD to detect and correct chafing of the fuel return line assembly, which could result in fuel leaking under the cabin floor and fuel vapors entering the cabin. This condition could lead to fire under the floor or in the cabin area.

Compliance

(e) To address this problem, you must do the following, unless already done:

Note: The requirements of this AD take precedence over the actions required in the service information.

Actions	Compliance	Procedures
(1) Inspect the fuel return line assembly (Cessna part number (P/N) 0500118–49 or FAA-approved equivalent P/N) for chafing.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first.	Follow Cessna Service Bulletin SB07–28–01, dated June 18, 2007.

Actions	Compliance	Procedures
(2) If chafing is found in the inspection required in paragraph (e)(1) of this AD, replace the fuel return line assembly (Cessna P/N 0500118–49 or FAA-approved equivalent P/N).	Before further flight after the inspection required in paragraph (e)(1) of this AD where evidence of chafing was found.	Follow Cessna Service Bulletin SB07–28–01, dated June 18, 2007.
(3) Inspect for a minimum clearance of 0.5 inch between the following parts throughout the entire range of copilot rudder pedal travel and adjust the clearance as necessary: (i) The fuel return line assembly (Cessna P/N 0500118–49 or FAA-approved equivalent P/N) and the steering tube assembly (Cessna P/N MC0543022–2C); and (ii) The fuel return line assembly (Cessna P/N 0500118–49 or FAA-approved equivalent P/N) and the airplane structure.	Before further flight after: (A) The inspection required in paragraph (e)(1) of this AD if no chafing is found; or (B) The replacement required in paragraph (e)(2) of this AD.	Follow paragraph 6 of the Instructions section of Cessna Service Bulletin SB07–28–01, dated June 18, 2007. This AD requires a minimum clearance of 0.5 inch.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Trenton Shepherd, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; fax: (316) 946–4107; e-mail: *trent.shepherd@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is Docket No. FAA–2007–29138; Directorate Identifier 2007–CE–073–AD.

Issued in Kansas City, Missouri, on October 17, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20862 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0036; Directorate Identifier 2007–NE–22–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) provided by the aviation authority of the United Kingdom to identify and correct an unsafe condition on an aviation product. The MCAI states the following:

Recently an RB211 HP turbine disc has been found with a crack which had propagated further than expected from the risk model that was used to establish the original inspection.

We are proposing this AD to detect cracks that could cause the high pressure (HP) turbine disc to fail and result in uncontained failure of the engine.

DATES: We must receive comments on this proposed AD by November 23, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK, telephone: 44 (0) 1332 242424; fax: 44 (0) 1332 249936.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0036; Directorate Identifier 2007–NE–22–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to http://www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, has issued United Kingdom Airworthiness Directive G–2006–0002, dated February 13, 2006, to correct an unsafe condition for the specified products. The CAA AD states:

> A population of HP turbine discs that were manufactured between 1989–1999 and which were subject to possible machining anomalies, were believed to have an increased chance of suffering from cooling air hole cracking, compared to the general fleet population of HP turbine discs. As a result of this risk, Rolls-Royce issued Non-Modification Service Bulletin (NMSB) 72–C816, recommending in-service inspections of the subject discs.
>
> Recently an RB211 HP turbine disc has been found with a crack which had propagated further than expected from the risk model that was used to establish the original inspection defined in the above NMSB; This has led to the need for a revision of the original inspection requirements.
>
> An HP turbine disc fracture would be uncontained and create a potential unsafe condition. Accordingly, this AD introduces revised inspection requirements to reflect the increased risk of HP turbine disc cracking and potential disc fracture.

You may obtain further information by examining the CAA AD in the AD docket.

Relevant Service Information

RR has issued Service Bulletin RB.211–72-AE718, dated January 24, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the CAA AD.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, they have notified us of the unsafe condition described above. We are issuing this AD because we evaluated all the information provided by the CAA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 72 engines installed on airplanes of U.S. registry. We also estimate that it would take about 10.0 work-hours per product to comply with this proposed AD, and that the average labor rate is $80 per work-hour. Required parts would cost about $15,000 per product. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,137,600. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Rolls-Royce plc: Docket No. FAA–2007–0036; Directorate Identifier 2007–NE–22–AD.

Comments Due Date

(a) We must receive comments by November 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce (RR) RB211–524 series turbofan engines with certain high pressure (HP) turbine disks, specified by part number (P/N) and serial number (SN) listed in Table 1 of this AD, installed. These engines are installed on, but not limited to, Boeing 747 series and 767 series airplanes and Lockheed L1011 series airplanes.

Reason

(d) Recently an RB211 HP turbine disc has been found with a crack which had propagated further than expected from the risk model that was used to establish the original inspection defined in the above NMSB; This has led to the need for a revision of the original inspection requirements.

An HP turbine disc fracture would be uncontained and create a potential unsafe condition. Accordingly, this AD introduces revised inspection requirements to reflect the increased risk of HP turbine disc cracking and potential disc fracture.

Actions and Compliance

(e) Unless already done, do the following actions.

(f) Carry out the eddy current inspection as detailed in Section 3—Accomplishment Instructions of Rolls-Royce NMSB 72–AE718, dated January 24, 2006, in accordance with the following schedule:

(1) The HP disc serial numbers listed in table 1 are to be inspected as follows:

TABLE 1.—HP DISK SERIAL NUMBERS BY PART NUMBER

Part No.	Serial No.	Part No.	Serial No.
UL29473	LAQDY6043	UL29472	LQDY9125
UL29473	LAQDY6048	UL29472	LQDY9554
UL29473	LAQDY6079	UL29472	LQDY9582
UL29473	LDRCZ10057	UL29472	LQDY9895
UL29473	LDRCZ10264	UL29472	LQDY9910
UL29473	LDRCZ10415	UL29472	LQDY9947
UL29473	LDRCZ11402	UL29472	LQDY9960
UL29473	LDRCZ11425	UL24994	LQDY6777
UL29473	LDRCZ11497	UL24994	LQDY6792
UL29473	LDRCZ11663	UL24994	LQDY6859
UL29473	LDRCZ11679	UL24994	LQDY6860
UL29473	LDRCZ12301	UL24994	LQDY6866
UL29473	LDRCZ12308	UL24994	LQDY6869
UL29473	LDRCZ12316	UL24994	LQDY6934
UL29473	LDRCZ12319	UL24994	LQDY6946
UL29473	LQDY6957	UL24994	LQDY6963
UL29473	LQDY9075	UL23166	LQDY6745
UL29473	LQDY9084	UL23166	LQDY6846
UL29473	LQDY9557	UL23166	LQDY6848
UL29473	LQDY9906	UL23166	LQDY6954
UL29473	LQDY9956	FK24790	LDRCZ12492
UL29473	LQDY9970	FK24790	LDRCZ12694
UL29473	LQDY9985		

(2) For all RB211–524 engine marks except RB211–524D4 variants:

(i) If the HP turbine disc cycles are greater than 6150 cycles since new on the effective date of this AD, inspect the HP turbine disc within 500 cycles after the effective date of this AD.

(ii) If the HP turbine disc cycles are less than 6150 cycles since new on the effective date of this AD, inspect the disc by whichever is the soonest of the conditions below:

(A) Prior to reaching 6650 cycles since new. The HP turbine disc life at inspection must be greater than 700 cycles since new.

(B) At next shop visit where the HP turbine rotor is removed from the Combustor Outer Case and the HP turbine disc life is greater than 700 cycles since new. If a HP turbine disc that meets these cyclic life criteria is currently at shop visit, and if, at the effective date of this Airworthiness Directive, it has not yet been reinstalled into the Combustion Outer Case, then the HP turbine disc must be inspected in accordance with the requirements of this Airworthiness Directive at the current shop visit.

(3) For all RB211–524D4 engine mark variants:

(i) If the HP turbine disc cycles are greater than 5000 cycles since new on the effective date of this AD, inspect the HP turbine disc within 500 cycles after the effective date of this AD.

(ii) If the HP turbine disc cycles were less than 5000 cycles since new on the effective date of this AD, inspect the HP turbine disc by whichever is the soonest of the conditions below:

(A) Prior to reaching 5500 cycles since new. The HP turbine disc life at inspection must be greater than 700 cycles since new.

(B) At the next shop visit where the HP turbine rotor is removed from the Combustor Outer Case and the HP turbine disc life is greater than 700 cycles since new. If a HP turbine disc that meets these cyclic life criteria is currently at shop visit, and if, at the effective date of this Airworthiness Directive, it has not yet been reinstalled into the Combustion Outer Case, then the HP turbine disc must be inspected in accordance with the requirements of this Airworthiness Directive at the current shop visit.

(4) For all other HP turbine discs specified in the Applicability of this Directive but not listed in Table 1 on page 2:

(i) Inspect the HP turbine disc at next shop visit where the HP turbine rotor is removed from the Combustor Outer Case and the HP turbine disc life is greater than 700 cycles since new. If a HP turbine disc that meets these cyclic life criteria is currently at shop visit, and if, at the effective date of this Airworthiness Directive, it has not yet been reinstalled into the Combustion Outer Case, then the HP turbine disc must be inspected in accordance with the requirements of this Airworthiness Directive at the current shop visit.

(ii) If a HP turbine disc has previously passed the inspection to Rolls-Royce NMSB 72–C816 or the focused inspection carried out in accordance with Rolls-Royce TS594–J Overhaul Process Manual Task 70–00–00–200–223 at greater than 700 cycles since new, then either of these inspections meets the requirements of this Airworthiness Directive.

FAA AD Differences

(g) Wherever the MCAI AD specifies 24 November 2005, this AD specifies the effective date of this AD.

Other FAA AD Provisions

(h) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to the Civil Aviation Authority Airworthiness Directive G–2006–0002, dated February 13, 2006, and RR Nonmandatory Service Bulletin RB.211–72–AE718, dated January 24, 2006, for related information.

(j) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 17, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–20923 Filed 10–23–07; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0625; FRL–8485–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the York (York and Adams Counties) 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the York (York and Adams Counties) ozone nonattainment area (York Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for the York Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the York Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the York Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2004–2006. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the York Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth has also submitted a 2002 base year inventory for the York Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the York Area for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request and of the maintenance plan and 2002 base year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before November 23, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0625 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0625, Marilyn Powers, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0625. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What Are the Actions EPA Is Proposing To Take?

On June 14, 2007, PADEP formally submitted a request to redesignate the York Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for the York Area as a SIP revision to ensure continued attainment in the area over the next 11 years. Pennsylvania also submitted a 2002 base year inventory for the York Area as a SIP revision. The York Area is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the York Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the York Area from nonattainment to attainment for the 8-

hour ozone NAAQS. EPA is also proposing to approve the York Area maintenance plan as a SIP revision (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in the York Area for the next 11 years. EPA is also proposing to approve the 2002 base year inventory for the York Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the York maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the York Area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The York Area was designated a basic 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the York Area (as well as most other areas of the country) effective June 15, 2005. *See,* 40 CFR 50.9(b); 69 FR at 23966 (April 30, 2004); and 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) (hereafter ''*South Coast*''). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA,* Docket No. 04–1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under Subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS.

In addition, the June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulation. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI. B. ''The York Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,'' EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the York Area to attainment of the 8-hour ozone NAAQS.

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the York Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the York Area is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the York Area has a design value of 0.081 ppm for the 3-year period of 2004–2006, using complete, quality-assured data. Therefore, the ambient ozone data for the York Area indicates no violations of the 8-hour ozone standard.

B. The York Area

The York Area consists of York and Adams Counties, Pennsylvania. Prior to its designation as an 8-hour ozone nonattainment area, the York Area was a marginal 1-hour ozone nonattainment area, and therefore, was subject to requirements for marginal nonattainment areas pursuant to section 182(a) of the CAA. *See* 56 FR 56694 (November 6, 1991). EPA determined that the York Area has attained the 1-hour ozone NAAQS by the November 15, 1993 attainment date (60 FR 3349, January 17, 1995).

On June 14, 2007, PADEP requested that the York Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2004–2006, indicating that the 8-hour NAAQS for ozone had been achieved in the York Area. The data satisfies the CAA requirements that the 3-year

average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value), must be less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, June 18, 1990;
- "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- "Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," dated November 30, 1993;
- "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On June 14, 2007, PADEP requested redesignation of the York Area to attainment for the 8-hour ozone standard. On June 14, 2007, PADEP submitted a maintenance plan for the York Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 11 years, until 2018. PADEP also submitted a 2002 base year inventory concurrently with its maintenance plan as a SIP revision. EPA has determined that the York Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of the York Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the York Area for the next 11 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_X and VOC MVEBs for transportation conformity purposes for the years 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO_X
2009	15.9	22.8
2018	9.0	10.0

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that the York Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the PADEP's June 14, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The York Area Has Attained the Ozone NAAQS

EPA is proposing to determine that the York Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year, must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same

location for the duration of the monitoring period required for demonstrating attainment.

In the York Area, there are two ozone monitors, located in York County (York) and another in Adams County (Biglerville) that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2004–2006 for the York Area. This data has been quality assured and is recorded in the AQS. PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-highest 8-hour daily maximum concentrations, along with the three-year average are summarized in Table 2.

TABLE 2.—YORK AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES

Monitor/County/AIRS ID	Annual 4th highest reading (ppm)		
	2004	2005	2006
York County Monitor/AQS ID 42–133–0008	.077	.089	.077
Adams County Monitor/AQS ID 42–001–0002	.072	.080	.074

The average for the 3-year period 2004–2006 is 0.081 ppm (based on York Monitor/AQS 42–133–0008).

The air quality data for 2004–2006 show that the York Area has attained the standard with a design value of 0.081 ppm. The data collected at the York Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. PADEP's request for redesignation for the York Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and data taken from AQS indicate that the York Area has attained the 8-hour ozone NAAQS.

B. The York Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the York Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) of the CAA. In making these proposed determinations, EPA ascertained which requirements are applicable to the York Area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that came due prior to the submittal of a complete redesignation request. *See also,* Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also,* 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of part D requirements for NSR permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However,

the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State. Thus, we do believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The York Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See,* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also,* the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(1) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. As we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due for the York Area prior to the submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 100(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(e) regarding section 110 of the CAA.

2. Part D Nonattainment Requirements Under the 8-Hour Standard

Pursuant to an April 30, 2004, final rule (69 FR 23951), the York Area was designated a basic nonattainment area under subpart 1 for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification.

With respect to the 8-hour standard, the court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

At the time the redesignation request was submitted, the York Area was classified under subpart 1 and was obligated to meet subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See,* September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also,* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation; 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit has recognized the inequity in such retroactive rulemaking. *See, Sierra Club* v. *Whitman,* 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such determination would have resulted in the imposition of additional requirements on that area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to 8-hour subpart 2 requirements, if the York Area initially had been classified under subpart 2, the first two Part D subpart 2 requirements applicable to the York Area under section 182(a) of the CAA would be a base year inventory requirement pursuant to section 182(a)(1) of the CAA, and the emissions statement requirement pursuant to section 182(a)(3)(B).

As stated previously, these requirements are not due for purposes of redesignation of the York Area, but nevertheless, Pennsylvania already has in its approved SIP, an emissions statement rule for the 1-hour standard that covers all portions of the designated 8-hour nonattainment area, and that satisfies the emissions statement requirement for the 8-hour standard. *See,* 25 Pa. Code 135.21(a)(1) codified at 40 CFR 52.2020; 60 FR 2881, January 12, 1995. With respect to the base year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base year inventory for the York Area, which was submitted on June 14, 2007, concurrently with its maintenance plan, into the Pennsylvania SIP. EPA is proposing to approve the 2002 base year inventory as fulfilling the requirements, if necessary, of both sections 182(a)(1) and 172(c)(3) of the CAA. A detailed evaluation of Pennsylvania's 2002 base year inventory for the York Area can be found in a Technical Support Document (TSD)

prepared by EPA for this rulemaking. EPA has determined that the emission inventory and the emissions statement for the York Area have been satisfied.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes that the general conformity and NSR requirements do not require approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See, Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also,* 60 FR 62748 (December 7, 1995).

In the case of the York Area, EPA has also determined that before being redesignated, the York Area need not comply with the requirement that an NSR program be approved prior to redesignation. EPA has also determined that areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D NSR Requirements of Areas Requesting Redesignation to Attainment.'' Normally, a State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. See the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the York Area, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the ozone transport region (OTR). The OTR NSR requirements are more stringent than that required for a marginal or basic ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the York Area.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as reasonably available control technology (RACT), and Vehicle Inspection and Maintenance (I/M) programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the York Area by virtue of the area's designation and classification. *See,* 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

In its June 8, 2007 decision the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore the Area must meet the federal anti-backsliding requirements, see 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the area's classification for the 1-hour ozone NAAQS. As set forth in more detail below, the area must also address four additional anti-backsliding provisions identified by the Court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone NAAQS requirements that continue to apply after revocation of the 1-hour ozone NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

''The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of paragraph (b) of this section.''

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that:

''Applicable requirements means for an area the following requirements to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS.''

(1) RACT.

(2) I/M.

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as required by section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) Transportation control measures (TCMs) under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA.

(12) NO_X requirements under section 182(f) of the CAA.

(13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii).''

Pursuant to 40 CFR 51.905(c), the York Area is subject to the obligations set forth in 51.905(a) and 51.900(f).

Prior to its designation as an 8-hour ozone nonattainment area, the York Area was designated a marginal nonattainment area for the 1-hour standard. With respect to the 1-hour standard, the applicable requirements under the anti-backsliding provisions at 40 CFR 51.905(a)(1) for the York Area are limited to the RACT and I/M programs specified in section 182(a) of the CAA and are discussed in the following paragraphs:

Section 182(a)(2)(A) required SIP revisions to correct or amend RACT for sources in marginal areas, such as the York Area, that were subject to control technique guidelines (CTGs) issued before November 15, 1990 pursuant to CAA section 108. On December 22, 1994, EPA fully approved into the Pennsylvania SIP all corrections required under section 182(a)(2)(A) of

the CAA (59 FR 65971, December 22, 1994). EPA believes that this requirement applies only to marginal and higher classified areas under the 1-hour NAAQS pursuant to the 1990 amendments to the CAA; therefore, this is a one-time requirement. After an area has fulfilled the section 182(a)(2)(A) requirement for the 1-hour NAAQS, there is no requirement under the 8-hour NAAQS.

Section 182(a)(2)(B) of the CAA relates to the savings clause for certain I/M programs. It requires marginal areas to adopt vehicle I/M programs. This provision was not applicable to the York Area because this area did not have nor was required to have an I/M program before November 15, 1990.

In addition the Court held that EPA should have retained four additional measures in its anti-backsliding provisions: (1) Nonattainment area NSR; (2) Section 185 penalty fees; (3) contingency measures under section 172(c)(9) or 182(c)(9) of the CAA; and (4) 1-hour motor vehicle emissions budgets that were yet not replaced by 8-hour emissions budgets. These requirements are addressed below:

With respect to NSR, EPA has determined that areas being redesignated need not have an approved nonattainment New Source Review program, for the same reasons discussed previously with respect to the applicable Part D requirement for the 8-hour standard.

The section 185 penalty fee requirement applies only to severe and extreme nonattainment areas, and was never applicable in the York 1-hour marginal nonattainment area.

With respect to the requirement for submission of contingency measures for the 1-hour standard, section 182(a) does not require contingency measures for marginal areas.

The conformity portion of the Court's ruling does not impact the redesignation request for the York Area except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour MVEBs, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. There are no applicable 1-hour MVEBs for the York Area. (As discussed elsewhere in this document, EPA is proposing to approve 8-hour MVEBs for the York Area.) To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

Thus EPA has concluded that the York Area has met all requirements applicable for redesignation under the 1-hour standard.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include RACT, NSR, enhanced vehicle inspection and maintenance (I/M), and Stage II vapor recovery or a comparable measure.

In the case of the York Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation. On October 19, 2001, EPA approved the 1-hour NSR SIP revision for the area. See 66 FR 53094 (October 19, 2001).

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. Reading, PA Redesignation, 61 FR 53174, (October 10, 1996), 62 FR 24826 (May 7, 1997). The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's nonattainment designation and classification, and thus are properly considered not relevant to an action changing an area's designation. *See* 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

5. York Area Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998); *Wall* v. *EPA*, 265 F. 3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See also*, 68 FR at 25425 (May 12, 2003) and citations therein.

C. The Air Quality Improvement in the York Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the York Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DAY (TPSD)

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
2002	8.5	27.1	25.3	10.4	71.3
2004	5.3	26.8	21.3	10.1	63.5
Diff. (02–04)	−3.2	−0.3	−4.0	−0.3	−7.8
Nitrogen Oxides (NO_X)					
2002	70.2	2.9	36.6	14.3	124.0
2004	75.3	3.0	31.9	13.7	123.9
Diff. (02–04)	5.1	0.1	−4.7	−0.6	−0.1

Between 2002 and 2004, VOC emissions decreased by 7.8 tpsd, and NO_X emissions decreased by 0.1 tpsd. These reductions, and anticipated future reductions, are due to the following permanent and enforceable measures.

1. Stationary Point Sources

Federal NO_X SIP Call (66 FR 43795, August 21, 2001).

2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003).

Portable Fuel Containers (69 FR 70893, December 8, 2004).

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP).

—Tier 1 (56 FR 25724, June 5, 1991).

—Tier 2 (65 FR 6698, February 10, 2000).

Heavy-duty Engine and Vehicle Standards (62 FR 54694, October 21, 1997, and 65 FR 59896, October 6, 2000).

National Low Emission Vehicle (NLEV) Program (PA) (64 FR 72564, December 28, 1999).

Vehicle Emission Inspection/ Maintenance Program (70 FR 58313, October 6, 2005).

4. Non-Road Sources

Non-road Diesel (69 FR 38958, June 29, 2004).

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the York Area achieving attainment of the 8-hour ozone standard.

D. The York Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the York Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the York Area for at least 11 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the York Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memo provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) an attainment emissions inventory;

(b) a maintenance demonstration;

(c) a monitoring network;

(d) verification of continued attainment; and

(e) a contingency plan.

Analysis of the York Area Maintenance Plan

(a) Attainment inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the three-year block of 2004–2006 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual ''typical summer day'' emissions of VOC and NO_X during 2004 and consists of a list of sources and their associated emissions.

The 2002 and 2004 point source data was compiled from actual sources. Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data Systems and EPA's publication series AP–42, and are based on Source Classification Codes (SCC).

The 2002 area source data was compiled using county-level activity data, from census numbers, from county numbers, etc. The 2004 area source data was projected from the 2002 inventory using temporal allocations provided by the Mid-Atlantic Regional Air Management Association (MARAMA).

The on-road mobile source inventories for 2002 and 2004 were compiled using MOBILE6.2 and Pennsylvania Department of Transportation (PENNDOT) estimates for VMT. The PADEP has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_X emissions for 2002, as well as for the projection years of 2004, 2009, and 2018 (shown in Tables 5 and 6 below).

The 2002 and 2004 emissions for the majority of non-road emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model calculates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled non-road equipment types and includes growth factors. The NONROAD model does not estimate emissions from locomotives or aircraft. For 2002 and 2004 locomotive emissions, the PADEP projected emissions from a 1999 survey using national fuel consumption information and EPA emission and conversion factors. There are no commercial aircraft operations in York and Adams Counties. For 2002 and 2004 aircraft emissions, PADEP estimated emissions using small airport operations statistics from *http://www.airnav.com*, and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

More detailed information on the compilation of the 2002, 2004, 2009, and 2018 inventories can found in the Technical Appendices, which are part of the June 14, 2007 state submittal.

(b) Maintenance Demonstration—On June 14, 2007, the PADEP submitted a maintenance plan as required by section 175A of the CAA. The York Area maintenance plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the York Area through the year 2018. A maintenance demonstration need not be based on modeling. *See*, *Wall* v. *EPA*, *supra*; *Sierra Club* v. *EPA*, *supra*. *See also*, 66 FR at 53099–53100; 68 FR at 25430–25432.

Tables 4 and 5 specify the VOC and NO_X emissions for the York Area for 2004, 2009, and 2018. The PADEP chose 2009 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase

above the 2004 attainment level during the time of the maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Point*	5.3	8.2	10.1
Area	26.8	26.2	28.9
Mobile**	21.3	15.9	9.0
Nonroad	10.1	8.4	6.9
Total	63.5	58.7	54.9

*The stationary point source emissions shown here do not include available banked emission credits as indicated in Appendix A–4 submitted with the maintenance plan.
**Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO_X EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2018 NO_X emissions
Point*	75.3	74.1	79.7
Area	3.0	3.1	3.3
Mobile**	31.9	22.8	10.0
Non-road	13.7	11.2	6.5
Total	123.9	111.2	99.5

*The stationary point source emissions shown here do not include available banked emission credits as indicated in Appendix A–4.
**Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

Additionally, the following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- The Clean Air Interstate Rule (CAIR) (71 FR 25328, April 28, 2006).
- The Federal NO_X SIP Call (66 FR 43795, August 21, 2001).
- Area VOC regulations concerning portable fuel containers (69 FR 70893, December 8, 2004), consumer products (69 FR 70895, December 8, 2004), and architectural and industrial maintenance coatings (AIM) (69 FR 68080, November 23, 2004).
- Federal Motor Vehicle Control Programs (light-duty) (Tier 1, Tier 2; 56 FR 25724, June 5, 1991; 65 FR 6698, February 10, 2000).
- Vehicle emission/inspection/maintenance program (70 FR 58313, October 6, 2005).
- Heavy duty diesel on-road (2004/2007) and low sulfur on-road (2006) (66 FR 5002, January 18, 2001).
- Non-road emission standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958 June 29, 2004).
- NLEV/PA Clean Vehicle Program (54 FR 72564, December 28, 1999)—Pennsylvania will implement this program in car model year 2008.
- Pennsylvania Heavy-Duty Diesel Emissions Control Program (May 10, 2002).

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the York Area.

(c) Monitoring Network—There are currently two monitors measuring ozone in the York Area. PADEP will continue to operate its current air quality monitor (located in York and Adams Counties), in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—In addition to maintaining the key elements of its regulatory program, the Commonwealth will track the attainment status of the ozone NAAQS in the York Area by reviewing air quality and emissions data during the maintenance period. The Commonwealth will perform an annual evaluation of Vehicle Miles Traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) to see if they exceed the attainment year inventory (2004) by more than 10 percent. PADEP will also continue to operate the existing ozone monitoring station in the York Area pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system. Section 175A(b) of the CAA states that eight years following the redesignation of the York Area, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made that commitment to meet the requirement of section 175A(b).

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the timeframe by which the state would adopt and implement the measure(s).

The ability of the York Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The

Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the York and Adams Counties monitors are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will also analyze the conditions leading to the excessive ozone levels and evaluate which measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will also be considered in the event that a violation of the 8-hour ozone standard occurs at the York and Adams Counties, Pennsylvania monitors. In the event of a violation of the 8-hour ozone standard, PADEP will adopt additional emissions reduction measures as expeditiously as practicable in accordance with the implementation schedule listed later in this notice and the Pennsylvania Air Pollution Control Act in order to return the area to attainment with the standard. Contingency measures to be considered for the York Area will include, but not be limited to the following:

Regulatory measures:

—Additional controls on consumer products.
—Additional controls on portable fuel containers.

Non-Regulatory measures:

—Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines).
—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local on-road or off-road fleets.
—Idling reduction technology for Class 2 yard locomotives.
—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.
—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
—Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The plan lays out a process to have any regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement the non-regulatory contingency measures within 12–24 months of the trigger.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the York Area Maintenance Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e., RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed ''on-road mobile source emission budgets.'' Pursuant to 40 CFR part 93 and § 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set forth in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBS for the York Area are listed in Table 1 of this document for 2009 and 2018, and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. The following example is for the 2018 safety margin: the York Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as a year to determine attainment levels of emissions for the York Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 63.5 tpd of

VOC and 123.9 tpd of NO_X. PADEP projected emissions out to the year 2018 and projected a total of 54.9 tpd of VOC and 99.5 tpd of NO_X from all sources in the York Area. The safety margin for the York Area for 2018 is the difference between these amounts, or 8.6 tpd of VOC and 24.4 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE YORK AREA

Inventory year	VOC Emissions (tpd)	NO_X Emissions (tpd)
2004 Attainment	63.5	123.9
2009 Interim	58.7	111.2
2009 Safety Margin	4.8	12.7
2004 Attainment	63.5	123.9
2018 Final	54.9	99.5
2018 Safety Margin	8.6	24.4

PADEP allocated 0.8 tpd VOC and 1.0 tpd NO_X to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs, PADEP allocated 1.1 tpd VOC and 1.0 tpd NO_X from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets, these portions of the safety margins are no longer available, and may not be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBs for the York Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE YORK AREA

Inventory Year	VOC Emissions (tpd)	NO_X Emissions (tpd)
2009 Projected On-road Mobile Source Projected Emissions	15.1	21.8
2009 Safety Margin Allocated to MVEBs	0.8	1.0
2009 MVEBs	15.9	22.8
2018 Projected On-road Mobile Source Projected Emissions	7.9	9.0
2018 Safety Margin Allocated to MVEBs	1.1	1.0
2018 MVEBs	9.0	10.0

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the York Area are approvable because the MVEBs for NO_X and VOCs continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the York Area Maintenance Plan?

The MVEBs for the York Area maintenance plan are being posted to EPA's conformity Web site concurrently with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the York Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the York Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/index.htm* (once there, click on ''Adequacy Review of SIP Submissions).

VIII. Proposed Actions

EPA is proposing to determine that the York Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the York Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the York Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the York Area from nonattainment to attainment for the 8-hour ozone standard. EPA is proposing to approve the maintenance plan for the York Area, submitted on June 14, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the York Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the York Area, and the MVEBs submitted by Pennsylvania for the York Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and

Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Because this action affects the status of a geographical area or allows the state to avoid adopting or implementing other requirements and because this action does not impose any new requirements on sources, this proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule, proposing to approve the redesignation of the York Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 16, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–20942 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1540, 1544, and 1560

[Docket No. TSA–2007–28572]

RIN 1652–AA45

Secure Flight Program

AGENCY: Transportation Security Administration, DHS.

ACTION: Proposed Rule: Extension of Comment Period.

SUMMARY: The Transportation Security Administration (TSA) is extending the comment period on the Notice of Proposed Rulemaking regarding the Secure Flight Program published on August 23, 2007. TSA has decided to grant, in part, two requests for an extension of the comment period and will extend the comment period for thirty (30) days. The comment period will now end on November 21, 2007, instead of October 22, 2007.

DATES: The comment period for the proposed rule at 72 FR at 48356, August 23, 2007, is extended until November 21, 2007.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Fax 202–493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Kevin Knott, Policy Manager, Secure

Flight, Office of Transportation Threat Assessment and Credentialing, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220, telephone (240) 568–5611.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this action by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI),[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. However, if TSA determines that portions of these comments may be made publicly available, TSA may include a redacted version of the comment in the public docket. If TSA receives a request to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS'') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://DocketInfo.dot.gov*.

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov*. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Availability of the Notice of Proposed Rulemaking and Comments Received

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov*;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Comment Period Extension

On August 23, 2007, TSA published a Notice of Proposed Rulemaking (NPRM) on the Secure Flight Program (*see* 72 FR 48356, August 23, 2007). The NPRM had a 60-day comment period that would end on October 22, 2007. In a request dated September 28, 2007, the Air Transport Association of America (ATA) requested that the deadline for filing comments on the Secure Flight NPRM be extended from October 22, 2007 to December 21, 2007. In a request dated October 4, 2007, the International Air Transport Association (IATA) similarly requested that the deadline for filing comments on the Secure Flight NPRM be extended until January 21, 2008.

TSA has decided to grant, in part, ATA and IATA's requests for an extension and will extend the comment period for thirty (30) days. The comment period will now be a total of 90 days and will end on November 21, 2007. This extension will allow the aviation industry and other interested entities and individuals additional time to complete their comments on the NPRM.

With this extension, the comment period for the Secure Flight NPRM will be the same as the comment period that U.S. Customs and Border Protection (CBP) provided for the NPRM on Passenger Manifests for Commercial Aircraft Arriving in and Departing From the United States; Passenger and Crew Manifests for Commercial Vessels Departing From the United States (''Pre-Departure APIS''). 71 FR 43681 (Aug. 23, 2006) (extending the original comment period from 30 days to 90 days). As discussed in the Secure Flight NPRM, the Pre-Departure APIS rulemaking is related to the Secure Flight NPRM in that together, the two rulemakings explain the Department of Homeland Security's (DHS') proposed unified approach to watchlist matching for international and domestic passenger flights.

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

Issued in Arlington, Virginia, on October 18, 2007.

Gale Rossides,

Acting Deputy Administrator.

[FR Doc. 07–5254 Filed 10–19–07; 3:33 pm]

BILLING CODE 9110–05–P

Notices

Federal Register

Vol. 72, No. 205

Wednesday, October 24, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 19, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Vegetable and Specialty Crops.

OMB Control Number: 0581–0178.

Summary of Collection: The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The Orders and Agreements become effective only after public hearings are held. The vegetable, and specialty crops marketing order programs provide an opportunity for producers in specified production areas to work together to solve marketing problems that cannot be solved individually.

Need and Use of the Information: Various forms are used to collect information necessary to effectively carry out the requirements of the Act and the Order/Agreement. Information collected is used to formulate market policy, track current inventory and statistical data for market development programs, ensure compliance, and verify eligibility, monitor and record grower's information. If this information were not collected, it would eliminate data needed to keep the industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for profit; Farms; Individuals or households.

Number of Respondents: 20,626.

Frequency of Responses: Reporting: On occasion, Quarterly, Biennially, Weekly, Semiannually, Monthly, Annually and Recordkeeping.

Total Burden Hours: 16,907.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–20954 Filed 10–23–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Nominations; Advisory Committee on Biotechnology and 21st Century Agriculture

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Solicitation of nominations, Advisory Committee on Biotechnology and 21st Century Agriculture.

SUMMARY: Pursuant to 5 U.S.C. App., the Agricultural Research Service is requesting nominations for qualified persons to serve as members of the Secretary's Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The charge for the AC21 is two-fold: To examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture.

DATES: Written nominations must be received by fax or postmarked on or before November 23, 2007.

ADDRESSES: All nomination materials should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone (202) 720–3817.

SUPPLEMENTARY INFORMATION:

AC21 members serve terms of up to 2 years, with terms for around half of the Committee members expiring in any given year. Nominations are being sought for open Committee seats. The terms of 13 members of the AC21 will expire in early 2008. The AC21 Charter allows for flexibility to appoint up to a total of 25 members. Members can be reappointed to serve up to 6 consecutive years. Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include,

to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominees of the AC21 should have recognized expertise in one or more of the following areas: Recombinant-DNA (rDNA) research and applications using plants; rDNA research and applications using animals; rDNA research and applications using microbes; food science; silviculture and related forest science; fisheries science; ecology; veterinary medicine; the broad range of farming or agricultural practices; weed science; plant pathology; biodiversity; applicable laws and regulations relevant to agricultural biotechnology policy; risk assessment; consumer advocacy and public attitudes; public health/epidemiology; ethics, including bioethics; human medicine; biotechnology industry activities and structure; intellectual property rights systems; and international trade. Members will be selected by the Secretary of Agriculture in order to achieve a balanced representation of viewpoints to address effectively USDA biotechnology policy issues under consideration. Background information regarding the work of the AC21, including reports already developed by the Committee, is available on the USDA Web site at *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?navid=BIOTECH&parentnav=AGRICULTURE&navtype=RT.* Over the next two years, it is expected that the AC21 will undertake work specifically related to transgenic animal technologies, and, if time permits, begin work on additional topics under the Committee's charge.

Nominations for AC21 membership must be in writing and provide the appropriate background documents required by USDA policy, including background disclosure form AD–755. All nomination materials should be sent to Michael Schechtman at the address listed in the **ADDRESSES** section. Forms may also be submitted by fax to (202) 690–4265. To obtain form AD–755 ONLY, please contact Dianne Harmon, Office of Pest Management Policy, telephone (202) 720–4074, fax (202) 720–3191; e-mail *Dianne.harmon@ars.usda.gov.*

The AC21 meets in Washington, DC, up to four (4) times per year. The function of the AC21 is solely advisory. Members of the AC21 and its subcommittees serve without pay, but with reimbursement of travel expenses and per diem for attendance at AC21 and subcommittee functions for those AC21 members who require assistance in order to attend the meetings. While away from home or their regular place of business, those members will be eligible for travel expenses paid by the Office of the Under Secretary, Research, Education, and Economics, USDA, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service is allowed under Section 5703 of Title 5, United States Code.

Submitting Nominations: Nominations should be typed and include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the AC21.
2. A resume or curriculum vitae.
3. A completed copy of form AD–755.

All nominations must be post-marked no later than [the date set forth above].

Dated: October 16, 2007.

Jeremy Stump,

Senior Advisor for International and Homeland Security Affairs and Biotechnology.

[FR Doc. E7–20912 Filed 10–23–07; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: The meeting dates are November 28, 2007, 8 a.m. to 5 p.m., and November 29, 2007, 8 a.m. to 4 p.m.

ADDRESSES: Waugh Auditorium, USDA Economic Research Service, Third Floor, South Tower, 1800 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone (202) 720–3817.

SUPPLEMENTARY INFORMATION: The seventeenth meeting of the AC21 has been scheduled for November 28–29, 2007. The AC21 consists of 23 members representing the biotechnology industry, farmers, food manufacturers, commodity processors and shippers, livestock handlers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, the Office of the United States Trade Representative, and the National Association of State Departments of Agriculture serve as ''ex officio'' members. At this meeting, there will be several objectives: (1) To complete all substantive work on a paper addressing the question, ''What issues should USDA consider regarding coexistence among diverse agricultural systems in a dynamic, evolving, and complex marketplace?'' and develop a plan for finalizing the paper and presenting it to the Office of the Secretary, USDA; (2) to discuss the new Biotechnology Quality Management System proposed by USDA's Animal and Plant Health Inspection Service and offer views on a series of questions relating to its implementation; and (3) to plan initial AC21 work related to transgenic animals. Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?navid=BIOTECH&parentnav=AGRICULTURE&navtype=RT.*

Requests to make oral presentations at the meeting may be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202 B Jamie L. Whitten Federal Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *Michael.schechtman@ars.usda.gov.* On November 28, 2007, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by e-mail at *Dianne.harmon@ars.usda.gov* at least five business days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please

indicate those needs at the time of registration.

Dated: October 16, 2007.

Jeremy Stump,

Senior Advisor for International and Homeland Security Affairs and Biotechnology.

[FR Doc. E7–20914 Filed 10–23–07; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Emergency Conservation Program; Supplemental Environmental Impact Statement

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: The Farm Service Agency (FSA) announces its intention to prepare a Supplemental Environmental Impact Statement (SEIS) for the Emergency Conservation Program (ECP). The SEIS will assess the potential environmental impacts of alternatives for administration and implementation of the ECP. FSA administers this program and is now conducting a comprehensive review of its current policies, achievements, and potential future program changes. FSA will be analyzing a range of ECP program alternatives. The SEIS also provides a means for the public to have opportunities to voice any opinions they may have about the program, and any ideas for improving it in the future. This Notice of Intent (NOI) informs the public that FSA is requesting public comment and describes in general the description of preliminary ECP Alternatives that will be analyzed in the Draft SEIS.

DATES: To ensure that the full range of issues and alternatives related to the ECP are addressed, FSA invites comments. Comments should be submitted by close of business on December 24, 2007, to ensure full consideration. Comments submitted after this date will be considered to the extent possible.

ADDRESSES: Written comments on the scope of the Draft SEIS and requests for copies of should be directed to ECP SEIS, Geo-Marine Incorporated, 2713 Magruder Blvd., Suite D, Hampton, VA 23666–1572; or by logging on to *http://public.geo-marine.com* to obtain state specific public scoping meetings dates, locations, directions, and comment forms.

FOR FURTHER INFORMATION CONTACT: Matthew T. Ponish, National Environmental Compliance Manager, USDA/FSA/CEPD/Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513, (202) 720–6853, or e-mail at: *Matthew.Ponish@wdc.usda.gov.* More detailed information on ECP may be obtained from FSA's Web site: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=ecp.*

SUPPLEMENTARY INFORMATION: The SEIS is being prepared on the ECP to provide FSA decision makers and the public with an analysis that evaluates program effects in appropriate contexts, describes the intensity of adverse as well as beneficial impacts, and addresses cumulative impacts of ECP. Title IV of the Agricultural Credit Act of 1978, as amended (codified at 16 U.S.C. 2201–2205) authorized the ECP, which provides emergency funding for farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of severe drought. Conservation problems existing prior to the disaster involved are not eligible for cost-sharing assistance. ECP is administered by FSA State and county committees. The SEIS will help FSA to review potential environmental impacts resulting from this program and the results will be used in implementing and modifying ECP administration and funding. The Record of Decision resulting from the SEIS will serve as guidance to FSA program decision makers when considering future ECP changes.

Public Participation

The public is urged to participate in helping to define the scope of the proposed Supplemental Environmental Impact Statement. In addition to allowing the opportunity to comment via mail and e-mail at the addresses listed previously, FSA plans to hold ten public scoping meetings to provide information and opportunities for discussing the issues and alternatives to be covered in the Draft SEIS and to receive oral and written comments. The meetings will be held in AL, CA, GA, FL, LA, MO, and TX. Each scoping meeting will be conducted in the evening to allow the greatest opportunity for public input. Please check *http://public.geo-marine.com* for meeting locations, times, directions, and comment forms.

Description of Preliminary SEIS Alternatives

FSA has developed a set of preliminary alternatives to be studied in the draft SEIS to initiate the process. The alternatives will be amended, as appropriate, based on input by the public and agencies during the public scoping process. The SEIS will address the following alternatives, which include recommended changes to the program.

Action (baseline)

Under this alternative, ECP would continue as it is currently administered with no substantive changes.

Alternative A

This alternative would consider changes to land eligibility that would make ECP available for assistance on farmlands other than cropland, pastureland, and hayland.

Alternative B

This alternative would make current ECP available only in those counties where disasters designated by the President or Secretary of Agriculture have occurred.

Alternative C

Alternative C would be a combination of Alternatives A and B. Under this alternative, farmlands, other than cropland, pastureland and hayland, in counties designated as disasters by the President or Secretary of Agriculture would be eligible for participation in ECP.

Signed in Washington, DC, on October 4, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E7–20961 Filed 10–23–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Emergency Food Assistance Program; Allocation Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice invites State and local agencies involved in the administration of The Emergency Food Assistance Program (TEFAP) and the general public to comment on the intent of the Department to modify the data sources used to calculate the formula for allocating TEFAP commodities and administrative funds among State agencies. Data sources currently used to allocate these resources have been used for a number of years. However, more accurate, reliable, and up-to-date data sources for gauging poverty and unemployment and, ultimately, each

State's need for TEFAP commodities and administrative funds, are now available. Therefore, unless comments reveal a significant disadvantage to implementing these changes, the Department intends to allocate TEFAP commodities and administrative funds for fiscal year 2008 using these new data sources.

DATES: To be assured of consideration, comments must be received on or before November 23, 2007.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this Notice. You may submit comments by any of the following methods:

- *Fax:* Submit comments by facsimile transmission to (703) 305–2420.
- *Disk or CD–ROM:* Submit comments on disk to Lillie F. Ragan, Assistant Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302–1594.
- *Mail:* Send comment to Lillie F. Ragan at the above address.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments submitted in response to this Notice will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at (703) 305–2662.

SUPPLEMENTARY INFORMATION: The purpose of TEFAP is to provide nutrition assistance to those with the greatest and most immediate need. To accomplish this purpose, the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501, *et seq.* (the Act)) requires that TEFAP commodities and administrative funds be allocated among States according to a formula that accounts for poverty and unemployment levels within each State. Section 214(a)(1) of the Act (7 U.S.C. 7515(a)(1)) requires that 60 percent of each State's allocation be equal to the percentage of the nation's persons in poverty within that State; and Section 214(a)(2) (7 U.S.C. 7515(a)(2)) requires that the remaining 40 percent be equal to the percentage of the nation's unemployed persons within that State.

The Act also requires that data from the Census Bureau be used to determine the poverty line (7 U.S.C. 7501(7) *citing* 42 U.S.C. 9902(2)); data from the Bureau of Labor Statistics (BLS) be used to determine the number of unemployed persons; that the number of unemployed persons be calculated as a monthly average; and that the data used to calculate that average originate from the most recent fiscal year for which information is available (7 U.S.C. 7501(2)). Aside from these requirements, the Act places no restrictions on the data sources or methodology used to calculate the formula.

The Department intends to use data sources that are more accurate, reliable, and up-to-date than our current sources to calculate the TEFAP allocation formula. This will provide a more accurate gauge of poverty and unemployment levels within the States, thus targeting program resources to those States most in need.

The poverty portion of the formula is currently updated annually, using data from the Annual Social and Economic Supplement to the Current Population Survey (CPS), an annual survey administered by the Census Bureau to approximately 100,000 households. This data is provided as a 3-year rolling average, and is comprised of data collected during the three calendar years preceding a given fiscal year. Thus, the poverty portion of the formula is actually calculated from data obtained from 300,000 households over a period of three years. The unemployment portion of the formula is updated annually, using data provided to the Bureau of Labor Statistics (BLS) by the States. Currently, a 3-month average based on the number of unemployed persons in each State during May, June, and July is used.

These data sources are deficient because they are not the most accurate, timely, and reliable sources available, and therefore limit the Department's ability to fulfill the purpose of the Act.

The poverty portion of the formula is deficient because it is calculated using a 3-year rolling average. This means that 60% of each State's annual TEFAP allocation is based primarily on data that is two or three years old, which provides an untimely and potentially inaccurate reflection of current poverty levels within each State. For example, if State A has historically had a small number of people in poverty, but suffers a disaster—such as a flood or hurricane—that casts a large number of people into poverty during a given calendar year, continued use of the 3-year rolling poverty average would require the Department to use two- and three-year old data, which would not adequately recognize the current need for nutrition assistance in the State, to calculate the poverty portion of State A's TEFAP allocation.

The 3-month unemployment average is deficient because each month represents one-third of the data used to calculate the unemployment portion of its annual TEFAP allocation. Thus, a 3-month average is highly susceptible to variations caused by reporting errors or anomalous economic conditions which may occur in any given month, but which are not necessarily representative of employment conditions within a State. For example, State B has historically had high levels of unemployment, but reports unusually low unemployment levels for May, perhaps due to a reporting error, a failure of many persons to report their unemployment status for extraneous reasons (such as a natural disaster), or a one-time employment increase (such as hosting a major convention or sporting event). As a result, one-third of the data used to calculate the unemployment portion of State B's TEFAP allocation would be based on data that does not reflect actual employment conditions in that State during most of the year.

To redress these deficiencies, the Department intends, consistent with the Act, to use data from the Census Bureau's American Community Survey (ACS) rather than CPS data to calculate the poverty portion of the formula, and a 10-month average rather than a 3-month average to calculate the unemployment portion.

ACS, which became fully operational in calendar year 2005, produces data that is superior to CPS data in several respects. Among these is the fact that ACS has a much larger sample size. While ACS is administered to approximately 2.5 percent of American households, or (currently) 3,000,000 households, per year, CPS is administered to only 100,000 households per year. ACS poverty statistics are also timelier. Unlike CPS statistics, which are based on data collected during the three calendar years preceding a given fiscal year, ACS statistics are based on data collected during the single calendar year preceding a given fiscal year. Lastly, unlike participation in CPS, participation in ACS is mandatory, which will result in higher response rates. Individuals over the age of 18 who

decline to participate are subject to penalties.

As to the unemployment portion of the formula, a 10-month unemployment average is more accurate than a 3-month average because it dampens the effect that atypical employment conditions and reporting errors in any month can have on a State's average. While a 12-month average would be the most ideal, BLS' reporting schedule is such that only 10 months of data are available at the time that TEFAP allocations would have to be calculated.

Because ACS poverty-data is single year data, the poverty portion of a State's allocation index may be more likely to vary from year-to-year. However, because the intent of TEFAP is to address the most immediate and current need, such variations actually serve the purpose of the program. Moreover, it is worth noting that year-to-year allocations have also varied widely using the current data sources. For example, of the 55 States and territories (i.e., States) operating TEFAP in fiscal year 2006, 5 had increases in their allocations of 10 percent or greater, 22 had increases of 0 to 9.9 percent, 27 had decreases of 0 to 9.9 percent, and 1 had a decrease greater than 10 percent from fiscal year 2005 to 2006. In fiscal year 2007, 5 States had increases of 10 percent or greater, 25 States had increases of 0 to 9.9 percent, 23 States had decreases of 0 to 9.9 percent, and 2 States had decreases greater than 10 percent. In contrast, if the proposed changes had been implemented prior to allocating 2007 resources, the number and size of increases and decreases that would have resulted are very similar to those that actually occurred. Specifically, 8 States would have received increases of 10 percent or greater, 18 States would have received increases of 0 to 9.9 percent, 27 States would have decreases of 0 to 9.9 percent, and 2 States would have had decreases greater than 10 percent. Therefore, unless comments reveal a significant disadvantage to implementing these changes, the Department intends to allocate TEFAP commodities and administrative funds for fiscal year 2008 using these new data sources without further notification.

Dated: October 18, 2007.

Gloria Gutierrez,

Acting Administrator.

[FR Doc. E7–20963 Filed 10–23–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Social and Cultural Structure of Private Forestry

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection; Social and Cultural Structure of Private Forestry.

DATES: Comments must be received in writing on or before December 24, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to John Schelhas, Southern Research Station, USDA Forest Service, 112 Campbell Hall, Tuskegee University, Tuskegee, AL 36088.

Comments also may be submitted via facsimile to (334) 724–4451 or by e-mail to: *jschelhas@fs.fed.us.*

The public may inspect comments received at 204 Campbell Hall, Tuskegee University, Tuskegee, AL during normal business hours. Visitors are encouraged to call ahead to (334) 727–8131 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: John Schelhas, Southern Research Station, USDA Forest Service, 334–727–8131. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Social and Cultural Structure of Private Forestry

OMB Number: 0596–NEW.

Expiration Date of Approval:

Type of Request: New.

Abstract: Non-industrial private forests constitute the majority of the forest in the South, and provide many important public and private benefits. These benefits are enhanced when landowners receive professional forestry assistance, though very few landowners seek assistance or have written management plans for their forests. This problem is particularly acute for minority forest landowners. This study will use ethnographic methods to learn about social and cultural aspects of forest landowner decision-making; in particular, forest values and identities, social networks for information flows, and actual forest management practices. The information gathered will contribute to scientific papers presented at professional meetings and in publications. The data will also assist in the development of new materials and techniques for outreach to forest managers by government, nonprofit, and private forester and natural resource managers.

Face-to-face interviews with 200 forest landowners (100 per year) will occur at three sites in the South. A team of researchers from the Southern Research Station, USDA Forest Service and the College of Agricultural, Environmental, and Natural Sciences, Tuskegee University will conduct the interviews and analyze the data collected. The information collected includes: (1) Responses to ''twenty statements test'' to measure identity; (2) social networks utilized to acquire forest management information; (3) life histories with regard to land ownership and forest management; (4) demographic data; and (5) land use and forest management practices.

The information will be collected only once from each landowner. If the information is not collected, federal, state, and private efforts to promote improved forest management to provide benefits for landowners and society will be less successful.

Estimate of Annual Burden: 2 hours.

Type of Respondents: Forest landowners.

Estimated Annual Number of Respondents: 100.

Estimated Annual Number of Responses per Respondent: Once.

Estimated Total Annual Burden on Respondents: 200 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: October 16, 2007.

Jimmy L. Reaves,

Associate Deputy Chief, Research & Development.

[FR Doc. E7–20868 Filed 10–23–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forestry Research Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The meeting room is changed for the Forestry Research Advisory Council. The meeting will take place in Berkeley, California, November 15–16, 2007. The purpose of the meeting is to discuss emerging issues in forestry research.

DATES: The meeting will be held November 15–16, 2007. On November 15 the meeting will be from 8 a.m. to 5 p.m, and on November 16 from 8–noon.

ADDRESSES: The meeting will be held at the Women's Faculty Club on the University of California Campus in Berkeley, California. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Daina Apple, Designated Federal Officer, Forestry Research Advisory Council, USDA Forest Service Research and Development, 1400 Independence Ave., SW., Washington, DC 20250–1120. Individuals also may fax their names and proposed agenda items to (202) 205–1530.

FOR FURTHER INFORMATION CONTACT: Daina Apple, Forest Service Office of the Deputy Chief for Research and Development, (202) 205–1665.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service, Cooperative State Research Education, and Extension Service staff and Council members. Persons wishing to bring forestry research matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

Dated: October 18, 2007.

Jimmy L. Reaves,

Associate Deputy Chief, Research & Development.

[FR Doc. E7–20867 Filed 10–23–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 071002551–7552–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals for Fiscal Year 2009

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed disposal levels of excess materials for the Fiscal Year (FY) 2009 Annual Materials Plan.

DATES: To be considered, written comments must be received by November 23, 2007.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue, NW., Room 3876, Washington, DC 20230, fax: (202) 482–5650 (Attn: Michael Vaccaro), e-mail: *MIC@bis.doc.gov;* or Peter Haymond, U.S. Department of State, Bureau of Economic and Business Affairs, Office of International Energy and Commodity Policy, Washington, DC 20520, fax: (202) 647–8758 (Attn: Peter Haymond), or e-mail: *haymondp@state.gov.*

FOR FURTHER INFORMATION CONTACT: David Newsom, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–7417.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98, *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials contained in the stockpile.

In Attachment 1, the Defense National Stockpile Center (DNSC) lists the proposed quantities that are enumerated in the stockpile inventory for the FY 2009 Annual Materials Plan. The Committee is seeking public comments on the potential market impact of the sale of these materials. Public comments are an important element of the Committee's market impact review process.

The quantities listed in Attachment 1 are not disposal or sales target quantities, but rather a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DNSC. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. All comments must be submitted to the address indicated in this notice. All comments submitted through e-mail must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on November 23, 2007. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for

public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: October 5, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

Attachment 1

PROPOSED FY 2009 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Aluminum Oxide, Abrasive	ST	5,500	(1)
Bauxite, Metallurgical Jamaican	LDT	2,000,000	(1)
Beryl Ore	ST	1,000	(1)
Beryllium Metal	ST	40	
Beryllium Copper Master Alloy	ST	300	(1)
Chromium, Ferro	ST	150,000	
Chromium, Metal	ST	1,000	
Cobalt	LB Co	3,000,000	(1)
Columbium Metal Ingots	LB Cb	20,000	(1)
Diamond Stones	ct	520,000	(1)
Germanium	Kg	8,000	
Manganese, Battery Grade, Natural	SDT	20,000	(1)
Manganese, Battery Grade, Synthetic	SDT	3,000	(1)
Manganese, Chemical Grade	SDT	25,000	(1)
Manganese, Ferro	ST	100,000	
Manganese, Metallurgical Grade	SDT	250,000	
Mica, All	LB	17,000	(1)
Platinum	Tr Oz	9,000	(1)
Platinum-Iridium	Tr Oz	3,000	(1)
Talc	ST	1,000	
Tantalum Carbide Powder	LB Ta	8,000	(1)
Tin	MT	6,000	(1)
Tungsten Metal Powder	LB W	300,000	(1)
Tungsten Ores & Concentrates	LB W	8,000,000	
VTE, Quebracho	LT	6,000	
VTE, Wattle	LT	200	(1)
Zinc	ST	30,000	(1)

[1] Actual quantity will be limited to remaining inventory.

[FR Doc. E7–20860 Filed 10–23–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Charter Renewal

SUMMARY: The Department of Commerce Chief Financial Officer and Assistant Secretary for Administration has renewed the charter for the U.S. Travel and Tourism Advisory Board (Board) for a 2-year period, through September 21, 2009. The Board is a federal advisory committee under the Federal Advisory Committee Act (5 U.S.C. App. 2).

SUPPLEMENTARY INFORMATION: The U.S. Travel and Tourism Advisory Board was first established on September 21, 2005, by the Secretary of Commerce, pursuant to his duties as authorized by law, in accordance with the Federal Advisory Committee Act, and with the concurrence of the General Services Administration.

Pursuant to Department of Commerce authority under 15 U.S.C. 1512, the Board shall advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industries. The Board shall act as a liaison among the stakeholders represented by the membership and shall provide a forum for those stakeholders on current and emerging issues in the travel and tourism industry, ensuring regular contact between the government and the travel and tourism sector. The Board shall advise the Secretary on government policies and programs that affect the U.S. travel and tourism industry, offer counsel on current and emerging issues, and provide a forum for discussing and proposing solutions to industry-related problems.

The U.S. Travel and Tourism Advisory Board consists of up to fifteen members appointed by the Secretary of Commerce. Members represent companies and organizations in the travel and tourism industry from a broad range of products and services, company sizes and geographic locations. The Board plans to maintain this broad balance in order to incorporate the views of the wide range of travel and tourism oriented industries. Prior membership included representatives of the hotel, airline, restaurant, retail, amusement park, and guided tour industries, as well as representatives of city and state tourism and convention bureaus.

The Board will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act, its implementing regulations, and applicable Department of Commerce policies.

FOR FURTHER INFORMATION CONTACT: Kate Worthington, Deputy Director, Office of Advisory Committees, (202) 482–4260.

Dated: October 11, 2007.

Kate Worthington,

Deputy Director, Office of Advisory Committees, U.S. Department of Commerce.

[FR Doc. E7–20915 Filed 10–23–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD49

Pacific Whiting; Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NMFS solicits nominations for the Advisory Panel (AP) on Pacific Whiting called for in the Agreement Between the Government of the United States of America and Canada on Pacific Hake/Whiting. Nominations are being sought for at least 6, but not more than 12 individuals to serve as United States representatives on the AP.

DATES: Nominations must be received on or before November 23, 2007.

ADDRESSES: You may submit nominations or comments, identified by 0648–XD49, by any of the following methods:

- E-mail: *WhitingAP.nwr@noaa.gov*: Include 0648–XD49 in the subject line of the message.
- Fax: 206–526–6736, Attn: Frank Lockhart
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Frank Lockhart.

FOR FURTHER INFORMATION CONTACT: Frank Lockhart at (206) 526–6142.

SUPPLEMENTARY INFORMATION: Title VI of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA,) entitled ''The Pacific Whiting Act of 2006,'' implements the 2003 ''Agreement Between the Government of the Government of the United States of America and Canada on Pacific Hake/Whiting.'' Among other provisions, the Whiting Act provides for the establishment of an AP to advise the Joint U.S.-Canada Management Committee on bilateral whiting management issues. Nominations are being sought to fill at least 6 but no more than 12 positions on the Pacific whiting AP for terms of 4–years.

The Whiting Act requires that appointments to the AP be selected from among individuals who are ''(A) knowledgeable or experienced in the harvesting, processing, marketing, management, conservation, or research of the offshore whiting resource; and (B) not employees of the United States.'' Nominations are sought for any persons meeting these requirements.

Nomination packages for appointment to the AP should include:

1. The name of the applicant or nominee and a description of his/her interest in Pacific whiting; and

2. A statement of background and/or description of how the above qualifications are met.

The terms of office for the Pacific Whiting AP members will be for 4 years (48 months). Members appointed to the AP will be reimbursed for necessary travel expenses.

In the initial year of treaty implementation, NMFS anticipates that up to 3 meetings of the AP will be required. In subsequent years, 1–2 meetings of the AP will be held annually. Meetings of the AP will be held in the United States or Canada, so AP members will need a valid U.S. passport. Meetings of the AP will be held concurrently with those of the Joint Management Committee, once per year for a period not to exceed 5 days in duration.

The Pacific Whiting Act of 2006 also states that while performing their appointed duties as AP members, members ''shall be considered to be Federal employees only for purposes of-

(1) injury compensation under chapter 81 of title 5, United States Code;

(2) requirements concerning ethics, conflicts of interest, and corruption as provided under title 18, United States Code; and

(3) any other criminal or civil statute or regulation governing the conduct of Federal employees.''

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 18, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–20931 Filed 10–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 071018607–7608–01]

New NOAA Cooperative Institutes (CIs): (1) Alaska and Related Arctic Regions Environmental Research and (2) Earth System Modeling for Climate Applications

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR) publishes this notice to provide the general public with a consolidated source of program and application information related to two competitive cooperative agreement (CA) award offerings. Both announcements will also be available through the Grants.gov Web site.

Cooperative Institute Competitions

NOAA is accepting applications for two separate competitions to establish: (1) A CI to study environmental issues associated with Alaska and related Arctic regions and (2) a CI focused on the development and use of Earth System Modeling applied to climate applications with timescales of decadal or longer. The application and award processes for each CI will be covered in this announcement. Both CIs are expected to provide the necessary capabilities to complement NOAA's current and planned activities in support of the 5-year Research Plan and the 20-year Research Vision.

NOAA's Climate Mission Goal in the Arctic requires knowledge of atmospheric circulation throughout the entire region; inflow and fate of Pacific and Atlantic water masses throughout the central Arctic Basin and peripheral seas; sea ice dynamics in all ice covered waters of the Arctic; and state of land cover, permafrost, glaciers and ice sheets throughout the Arctic region. NOAA's Ecosystem Mission Goal proposes documentation of population trends in exploited and protected species wherever they live in order to assess and manage these species. NOAA's Weather and Water Mission Goal proposes research to understand the coastal hazards, storms, and tsunamis that affect Alaska's population, ecosystems and coast. To achieve its mission in the Arctic, NOAA will need to engage many international partners. The regional Alaska CI will be

a very useful organization for promoting and facilitating international collaboration of all types. Political boundaries are not the primary determinant of the geographic scope of this regional CI focused on Alaska and neighboring Arctic issues; rather boundaries are established by the science problem being addressed.

The proposed CI for Earth System modeling will be focused on climate applications for decadal or longer timescales and will contribute to research leading to operational Earth System Models that will have many benefits for NOAA. These would include improved forecasting of ecosystem conditions; new analytical and predictive capabilities for water resources, hydrology, climate and oceans; and improved understanding the links between climate and regional impacts, including drought, hurricanes, fires, and weather extremes.

Both CIs will facilitate a long-term collaborative environment between NOAA and the recipients within which broad-based research, modeling, and education and outreach capabilities that focus on the NOAA priorities identified above can be developed and sustained. Because of the breadth of the capabilities needed for these CIs, it may be difficult for some applicants to provide all of the capabilities required to support NOAA's needs. Given this, NOAA will also consider applications from a consortium of research institutions working together as one CI. Any proposals involving a consortium will require a rationale for that configuration.

DATES: Proposals must be received by the OAR no later than 5 p.m., E.T., Monday, December 24, 2007. Proposals submitted after that date will not be considered.

ADDRESSES: Applicants are strongly encouraged to apply online through the Grants.gov Web site (*http://www.grants.gov*) but paper submissions are acceptable if internet access is not available. If a hard copy application is submitted, the original and two unbound copies of the proposal should be included. Paper submissions should be sent to: NOAA, OAR, 1315 East West Highway, Room 11326, Silver Spring, Maryland 20910, *Attn:* Dr. John Cortinas. No e-mail or facsimile proposal submissions will be accepted. The complete federal funding opportunity announcements associated with this notice can be found at the Grants.gov Web site, *http://www.grants.gov*, and the NOAA Web site at *http://www.nrc.noaa.gov/ci*.

FOR FURTHER INFORMATION CONTACT: For a copy of the federal funding opportunity announcement and/or application kit for each of these Cooperative Institutes, please go to *http://www.Grants.gov*, via NOAA's Web site, or contact Dr. John Cortinas, 1315 East West Highway, Room 11326, Silver Spring, Maryland 20910; Telephone: (301) 734–1090; facsimile: (301) 713–3515; e-mail: *John.Cortinas@noaa.gov*.

SUPPLEMENTARY INFORMATION: All applicants must comply with all requirements contained in the federal funding opportunity announcements for each of these CIs.

Background

A CI is a NOAA-supported, non-federal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission. CIs are established at research institutions that also have a strong education program with established graduate degree programs in NOAA-related sciences. The CI provides significant coordination of resources among all non-government partners and promotes the involvement of students and postdoctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties.

For both the Alaska CI and the Earth System Modeling CI, NOAA has identified the need to establish a CI to focus on scientific research associated in support of NOAA's Strategic Plan, NOAA's 5-year Research Plan, and NOAA's 20-year Research Vision. (All documents are available at *http://www.spo.noaa.gov/*.)

Alaska and Related Arctic Regions Environmental Research CI

The proposed Alaska CI should possess outstanding capabilities to provide research under three themes: (1) Ecosystem studies and forecasting, (2) coastal hazards, and (3) climate change and variability. To conduct research under these themes, the proposed CI should possess the flexibility needed to work on multi-disciplinary research in collaboration with NOAA's Climate Program Office, the Alaska Fisheries Science Center, the NWS Alaska and Pacific regions, the National Centers for Coastal Ocean Science, the Alaska Center for Climate Assessment and Policy at the University of Alaska—Fairbanks, a NOAA-funded Regional Integrated Sciences and Assessments Center. In addition, the CI should collaborate with other NOAA partners including other CIs and Alaska Sea Grant. NOAA requires substantial flexibility from the CI to provide both scientific depth to existing programs and to add new capabilities when NOAA is faced with new drivers (*e.g.*, need to advance climate impacts science or climate information services for the region or develop hazard resilient coastal communities).

The CI should have resident or affiliated faculty with broad expertise in conducting research in all three themes. Research under these themes will require expertise in physical oceanography, sea ice, marine biology, remote sensing, land surface hydrology, permafrost, terrestrial biology (including vegetative land cover), atmospheric chemistry (including trace substances and fluxes between atmosphere and ocean and atmosphere and land), glaciology, meteorology, cloud physics, space physics (including aurora research), regional climate modeling (including linkages between physical processes and ecological processes), and technology and engineering for in-situ observing systems. Staff of the CI should have experience in field operations in cold environments with a permanent or seasonal cryosphere, including ship-based operations, terrestrial camps and permanent stations, and ice camps. The CI should have staff experience in managing and implementing large-scale, multi-investigator Arctic science programs involving both domestic and foreign sponsors and scientists. The CI must have the capability to conduct research related to improving the detection of tsunamigenic earthquakes using a digital broadband seismic network.

The CI is expected to have or have access to ice breaking research vessels necessary to research ice-covered areas of the Arctic Ocean and the Bering/Chukchi/Beaufort Seas, as well as access to supercomputing facilities needed to run complex tsunami and climate models. The CI should also have the ability and desire to provide rapid-response products to address Arctic science issues of immediate importance, for example by working with NOAA scientists to test applicability of research results in an operational environment using a test bed model. This CI will play an important role in helping NOAA keep its operational and information services at the state of the art in science and technology by providing research that is needed for the 5- to 20-year time frame and working with NOAA to identify promising research that can be transitioned to operations 2 to 5 years prior to implementation.

The CI should have doctoral-level education programs in fields relevant to NOAA's high latitude missions. The CI is expected to promote student and postdoctoral involvement in research projects in ways to train the next generation of scientists and NOAA employees. The CI should provide support for graduate and undergraduate students and post-doctoral scientists that will provide a ''hands-on'' opportunity for the development of a wide range of expertise. NOAA can capitalize on this expertise, as CI employees and students will work with NOAA to conduct research that complements NOAA's mission needs. The CI should also have the capability to share research results conducted at the CI with the stakeholders and decision makers.

Earth System Modeling for Climate Applications CI

NOAA has established itself as the premier Federal provider of climate information. Its expertise in long term climate was recently showcased in the International Panel on Climate Change's (IPCC) Fourth Assessment Report on Climate Change. It is clear, however, that current state-of-the-art physical coupled climate models, particularly those that are used to forecast climate conditions on decadal and longer time scales, lack important features that are crucial for understanding how a warming world will affect the world's terrestrial and oceanic ecosystems and biogeochemical cycles, and importantly, how ecosystems can affect climate change. This understanding can be achieved in part by a vigorous climate observing program, and by a world class Earth System modeling capability. The proposed Earth System Modeling CI will address these needs by providing capabilities in Earth System Modeling research and Analysis to develop and improve climate models that simulate and predict chemical, physical, and ecosystem changes in the whole Earth system. The proposed Alaska CI should possess outstanding capabilities to provide research under three themes: (1) Earth system modeling and analysis, (2) data assimilation, and (3) earth system modeling applications. The CI should have capabilities and conduct research in data assimilation to develop and improve techniques to assimilate environmental observations, including aerial, terrestrial, oceanic, and biological observations, to produce the best estimate of the environmental state at the time of the observations for use in analysis, modeling, and prediction activities associated with climate predications. The CI should also have capabilities to conduct research on model applications including focus on the use of Earth System Models to study physical processes associated with long-term (decadal or longer) climate change and its impacts, including abrupt change, coastal processes, carbon management, sea-level rise, drought, the frequency of hurricanes and other extreme events, and climate predictability, as well as attributing climate change to natural and anthropogenic forces.

The proposed CI must strongly support ''a strategic approach that attracts and maintains a competent and diverse workforce and creates an environment that develops, encourages, and sustains employees as they work to accomplish NOAA's strategic goals,'' as described in NOAA's latest Strategic Plan. The CI must also have a strong education program with established graduate degree programs in NOAA-related sciences. These programs must provide outstanding opportunities to train the next generation of scientists and NOAA employees by giving undergraduate, graduate students, and post-doctoral scientists a ''hands on'' opportunity to participate in NOAA research activities. To strengthen the collaborations between NOAA and the CI, most of these students and postdocs should be located close enough to allow them to work with GFDL scientists in Princeton, New Jersey at least weekly. This training is extremely important for NOAA as it strives to attract and maintain a competent and diverse scientific workforce.

Electronic Access: Applicants can access, download, and submit electronic grant applications, including the full funding opportunity announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov*. The closing date will be the same as for the paper submissions noted in this announcement. For applicants filing through Grants.gov, NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Registration may take up to 10 business days. More details on how to apply are provided in the NOAA June 30, 2005 **Federal Register** Notice on ''Availability of Grant Funds for Fiscal Year 2006,'' which can be found at: *http://www.Grants.gov* or *http://www.ago.noaa.gov/grants/funding.shtml*.

Proposals must include elements requested in the full Federal Funding Opportunity announcement on the grants.gov portal. If a hard copy application is submitted, NOAA requests that the original and two unbound copies of the proposal be included. Proposals, electronic or paper, should be no more than 75 pages (numbered) in length, excluding budget, investigators, vitae, and all appendices. Federally mandated forms are not included within the page count. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Funding Availability: For the proposed Alaska CI, NOAA expects that approximately $2–3M will be available for the CI in the first year of the award. For the proposed Earth System Modeling CI, NOAA expects that approximately $3M will be available in the first year of the award. For each proposed CI the annual Task I budget should not exceed $300,000. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding and any NOAA policies on Task I funding. Funding for subsequent years is expected to be constant throughout the period, depending on the quality of the research, the satisfactory progress in achieving the stated goals described in the proposal, continued relevance to program objectives, and the availability of funding.

Authorities: 15 U.S.C. 313, 15 U.S.C. 1540; 15 U.S.C. 2901 *et seq.*, 16 U.S.C. 753a, 33 U.S.C. 883d, 33 U.S.C. 1442, 49 U.S.C. 44720(b).

(Catalog of Federal Domestic Assistance: 11.432, Office of Oceanic and Atmospheric Research (OAR) Joint and Cooperative Institutes.)

Eligibility: Eligibility is limited to non-federal public and private non-profit universities, colleges and research institutions that offer accredited graduate level degree-granting programs in NOAA-related sciences.

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of CI commitment under NOAA's standard evaluation criteria for overall qualification of applicants. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of indirect costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff,

graduate students, visiting scientists, or postdoctoral scientists.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation Criteria and Review and Selection Procedures: NOAA's standard evaluation criteria and the review and selection procedures contained in NOAA's June 30, 2005, omnibus notice are applicable to this solicitation and are as follows:

A. Evaluation Criteria for Projects

Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are provided to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant. Note that information on how the proposal addresses issues related to the National Environmental Policy Act (NEPA) will not be needed in this submission but will be required when individual projects are proposed.

1. Importance and/or relevance and applicability of proposed project to the program goals (25 percent): This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities.

- Does the proposal include research goals and projects that address the critical issues identified in NOAA's 5-year Research Plan, NOAA's Strategic Plan, and the priorities described in the federal funding opportunity announcement published at *http://www.grants.gov*?
- Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?
- Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourages student participation in NOAA-related research studies?
- (For the Earth System Modeling CI only) Will most of the staff at the CI be located near a NOAA facility, particularly the Geophysical Fluid Dynamics Laboratory in Princeton, New Jersey, to enhance collaborations with NOAA?

2. *Technical/scientific merit (30 percent):* This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

- Does the project description include a summary of clearly stated goals to be achieved during the five-year period that reflect NOAA's strategic plan and goals?
- Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI?

3. *Overall qualifications of applicants (30 percent):* This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

- If the institution(s) and/or principal investigators have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA scientists on research projects?
- Is there internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/interdisciplinary research described in the proposal?
- Is there a well-developed business plan that includes fiscal and human resource management as well as strategic planning and accountability?
- Are there any unique capabilities in a mission-critical area of research for NOAA?
- Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by the amount of the cost sharing contribution?

4. *Project costs (5 percent):* The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach and education (10 percent):* NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

B. Review and Selection Process

An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer panel review. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, each expert will submit an individual review and there will be no consensus opinion. The merit reviewers' ratings are used to produce a rank order of the proposals. The Selecting Official selects proposals after considering the peer panel reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors.

C. Selection Factors

The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
a. Geographically.
b. By type of institutions.
c. By type of partners.
d. By research areas.
e. By project types.
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Applicants must comply with all requirements contained in the full funding opportunity announcements for each project competition in this announcement.

Universal Identifier: Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. *See* the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177–66178 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1 (866) 705–5711 or via the internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at NOAA's NEPA Web site, *http://www.nepa.noaa.gov/*, and the Council

on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*.

While not part of this initial application, upon award and subsequent submission of projects, the CI is required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if such assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to cooperate with NOAA shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability: Funding for years 2–5 of the Cooperative Institute is contingent upon the availability of appropriated funds. In no event will NOAA or the Department of Commerce be responsible for application preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Paperwork Reduction Act: This notification involves collection of information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) respectively under Control Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, grants, benefits, and contracts (5 U.S.C. 553 (a)(2)).

Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and none has been prepared.

Dated: October 18, 2007.

Terry J. Bevels,

Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–20973 Filed 10–23–07; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB) Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Monday, November 5, 2007, from 10:30 a.m. to 5:30 p.m. and Tuesday, November 6, 2007, from 8 a.m. to 3:45 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held both days in the NOAA Nickles Conference Room 3910 at the National Weather Center on the campus of the University of Oklahoma, 120 David L. Boren Blvd., Norman, Oklahoma 73072–7303. Please check the SAB Web site *http://www.sab.noaa.gov* for confirmation of the venue.

Status: The meeting will be open to public participation with a 30-minute public comment period on November 6 (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments should be received in the SAB Executive Director's Office by October 29, 2007 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 29, 2007, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) The final NOAA response to the Reports from the Hurricane Intensity Research Working Group (HIRWG); (2) the final NOAA response to the External Review of NOAA's Ecosystem Research and Science Enterprise; (3) the draft report from the SAB's Extension, Outreach, and Education Working Group; (4) a presentation on Laboratory Reviews in the NOAA Office of Oceanic and Atmospheric Research; (5) tours and discussions of the University of Oklahoma and NOAA components of the National Weather Center; and (6) Updates from SAB Working Groups on Fire Weather Research, Social Science, and Partnerships.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director,

Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, e-mail: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov*.

Dated: October 18, 2007

Terry Bevels,

Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–20866 Filed 10–23–07; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board

AGENCY: DoD; Defense Information Systems Agency.

ACTION: Notice of Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of members to the Defense Information Systems Agency (DISA) Performance Review Board. The Performance Review Board provides a fair and impartial review of Senior Executive Service (SES) Performance appraisals and makes recommendations to the Director, Defense Information Systems Agency, regarding final performance ratings and performance awards for DISA SES members.

DATES: *Effective Date:* Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Beth Shelley, SES Program Manager, Defense Information Systems Agency, P.O. Box 4502, Arlington, Virginia 22204–4502, (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4214(c)(4), the following are the names and titles of DISA career executives appointed to serve as members of the DISA Performance Review Board. Appointees will serve one-year terms, effective upon publication of this notice.

MG Marilyn A. Quagliotti, USA, Vice Director, DISA, Chairperson.

Ms. Diann L. McCoy, Component Acquisition Executive, DISA, Member.

Mr. John J. Garing, Director for Strategic Planning and Information/Chief Information Officer, DISA, Member.

Mr. John J. Penkoske, Jr., Director for Manpower, Personnel, and Security, DISA, Member.

October 17, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–5248 Filed 10–23–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 23, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 17, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: 21st Century Community Learning Centers Annual Performance Report.

Frequency: On Occasion; Quarterly; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,400.

Burden Hours: 36,400.

Abstract: Originally authorized under Title X, Part I, of the Elementary and Secondary Education Act, the program was initially administered through the U.S. Department of Education, which provided grants directly to over 1,825 grantees. With the reauthorization of the program under the No Child Left Behind Act, direct administration of the program was transferred to state education agencies (SEA) to administer their own grant competitions. Preliminary data shows that states have awarded approximately 1,400 grants to support more than 4,700 centers in every state in the country. The purpose of the 21st Century Community Learning Centers program (21st CCLC) program, as reauthorized under Title IV, Part B, of the No Child Left Behind Act of 2001, 4201 *et seq.*, (20 U.S. Code 7171 *et seq.*), is to provide expanded academic enrichment opportunities for children attending low-performing schools. To reflect the changes in the authorization and administration of the 21st CCLC program and to comply with its reporting requirements, the Education Department (ED) is requesting authorization for the collection of data through Web-based, data-collection modules, the Annual Performance Report, the Grantee Profile, the Competition Overview, and the State Activities module, which collectively will be housed in an application called the 21st CCLC Profile and Performance Information Collection System (PPICS). The data will continue

to be used to fulfill ED's requirement under the Government Performance and Results Act (GPRA) to report to Congress annually on the implementation and progress of 21st CCLC projects and the use of state administrative and technical assistance funds allocated to the states to support the program. The data collection will also provide SEA liaisons with needed descriptive data about their grantees and allow SEA liaisons to conduct performance monitoring and identify areas of needed technical assistance.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3444. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20933 Filed 10–23–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 23, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 19, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: The Efficacy of Standardized Formative Assessments and Differentiated Instruction on Student Achievement.

Frequency: Semi-Annually.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 252.

Burden Hours: 8862.

Abstract: The Department of Education's Institute for Education Sciences has commissioned this evaluation as a response to the current need for experimental research about the impacts of formative assessment on student achievement and teacher practice. This project will assess the efficacy of the Northwest Evaluation Association's program entitled ''Measuring Academic Progress'' or MAP by looking at the impact on teacher practice and student achievement. The MAP intervention combines theory and research in two areas that have gained considerable attention in recent years: (1) Formative assessment: (2) and differentiated instruction. MAP tests and training are currently in place in more than 10% of K–12 school districts nationwide (just over 2,000 districts participate among the approximately 17,500 districts). Despite its popularity, the effectiveness of the MAP and its training have not been established to date. Furthermore, the relative ubiquity of its current use, along with a projected growth in the number of schools investing in MAP and its associated training, makes it a prime candidate for this type of study.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3419. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *CAREYICDocketMgr@ed.gov* 202–245–6432. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20956 Filed 10–23–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 23, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 18, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: United States—Russia Program: Improving Research and Educational Activities in Higher Education.

Frequency: Annually.

Affected Public:

Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 12.

Burden Hours: 360.

Abstract: The U.S.-Russia Program is based on objectives outlined in the 2006 Memorandum of Understanding (MOU) between the United States and Russia. The competition supports projects which expand cooperation and develop partnerships among various types of educational institutions in the U.S. and Russia. The partnerships demonstrate the best innovative practices, which may support the exchange of university faculty and scholars, the development of joint courses, educational materials, and other types of educational and methodological activities.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3450. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20958 Filed 10–23–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 23, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 18, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Perkins Loan Program Regulations.

Frequency: On Occasion; Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 13,130,208.

Burden Hours: 247,088.

Abstract: Eligible and participating institutions of higher education make Perkins loans to eligible borrowers. Information is necessary to make determinations regarding program compliance with the implementing regulations.

Requests for copies of the information collection submission for OMB review

may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3448. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20959 Filed 10–23–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 23, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 19, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Federal Register Notice Inviting Applications for the Participation in the Quality Assurance (QA) Program.

Frequency: One time.

Affected Public: Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 125.

Burden Hours: 125.

Abstract: With this notice, the Secretary invites institutions of higher education to send a letter of application to participate in the Department of Education's Quality Assurance (QA) Program. This Program is intended to allow and encourage participating institutions to develop and implement their own comprehensive programs to verify student financial aid application data.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3442. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20960 Filed 10–23–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students; Overview Information; Native American and Alaska Native Children in School Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.365C.

Dates:

Applications Available: October 24, 2007.

Deadline for Transmittal of Applications: December 6, 2007.

Deadline for Intergovernmental Review: February 5, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide grants for eligible entities to develop high levels of academic attainment in English among limited English proficient (LEP) children, and to promote parental and community participation in language instruction educational programs.

Priorities: These priorities are from the Department of Education's notice of final priorities for Discretionary Grant Programs, published in the **Federal Register** on October 11, 2006 (71 FR 60046).

Competitive Preference Priorities: For this FY 2008 competition these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets these priorities.

These priorities are:

Competitive Preference Priority 1—Secondary Schools: Projects that support activities and interventions aimed at improving the academic achievement of secondary school students who are at greatest risk of not meeting challenging State academic standards and not completing high school.

Competitive Preference Priority 2—Professional Development for Secondary School Teachers: Projects that support high-quality professional development for secondary school teachers to help these teachers improve student academic achievement.

Program Authority: 20 U.S.C. 6821(c)(1)(A) and 6822.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, and 99. (b) The notice of final priorities published in the **Federal Register** on October 11, 2006 (71 FR 60046).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $1,600,000 for new awards for this program for FY 2008. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $175,000–$225,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities, when they operate elementary, secondary, and postsecondary schools primarily for Native American children (including Alaska Native children), are eligible applicants under this program: Indian tribes; tribally sanctioned educational authorities; Native Hawaiian or Native American Pacific Islander native language educational organizations; elementary schools or secondary schools that are operated or funded by the Bureau of Indian Education (BIE), or a consortium of such schools; elementary schools or secondary schools operated under a contract with or grant from the BIE in consortium with another such school or a tribal or community organization; and elementary schools or secondary schools operated by the BIE and an IHE, in consortium with elementary schools or secondary schools operated under a contract with or a grant from the BIE or a tribal or community organization.

Note: Any eligible entity that receives Federal financial assistance under this program is not eligible to receive a subgrant under section 3114 of title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Behind Act of 2001 (NCLB).

Note: Eligible applicants applying as a consortium should read and follow the regulations in 34 CFR 75.127 through 75.129.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:*

Participation by Private School Children and Teachers. An entity that receives a grant under the Native American and Alaska Native Children in School Program is required to provide for the equitable participation of private school children and their teachers or other educational personnel.

In order to ensure that grant program activities address the needs of private school children, the applicant must engage in timely and meaningful consultation with appropriate private school officials during the design and development of the program. This consultation must take place before the applicant makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

Administrative direction and control over grant funds must remain with the grantee. (*See* section 9501, Participation by Private School Children and Teachers, of the ESEA.)

IV. Application and Submission Information

1. *Address to Request Application Package:* Patrice Swann, U.S. Department of Education, 400 Maryland Ave., SW., Potomac Center Plaza, Room 10070, Washington, DC 20202–6510. Telephone: (202) 245–7130, or by e-mail: *patrice.swann@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 35 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the three-page abstract. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: October 24, 2007.

Deadline for Transmittal of Applications: December 6, 2007.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an

accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: February 5, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov site. The Native American and Alaska Native Children in School Program, CFDA Number 84.365C, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Native American and Alaska Native Children in School Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., for 84.365, not for 84.365C).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp).* These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your

application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact either person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.365C), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.365C), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.365C),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and section 3115 of the ESEA, as amended by NCLB. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The *Notes* we have included after each criterion are guidance to assist applicants in understanding the criterion as they prepare their applications and are not required by statute or regulation.

(a) *Project activities.* (10 points)

The Secretary reviews each application to determine how well the applicant proposes to carry out activities that will—

(1) Increase the English language proficiency of LEP children by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing English proficiency and student academic achievement in core academic subjects; and (5 points)

(2) Provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel, that is—

(i) Designed to improve the quality of instruction to and assessment of LEP children;

(ii) Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instructional strategies for LEP children;

(iii) Based on scientifically based research demonstrating the effectiveness of the professional development in substantially increasing these teachers' subject matter knowledge, teaching knowledge, and teaching skills; and

(iv) Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance. (5 points)

(b) *Need for project.* (5 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

Note: For example, we look for information on the academic and language development needs of students selected to participate in the program, based on the results of student English language proficiency assessments and content assessments, including current data on achievement levels in English language proficiency and content subjects of proposed student participants.

(c) *Quality of the project design.* (25 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (15 points)

Note: For example, we look for ambitious measurable objectives that reflect GPRA measures of improved student English

language proficiency and knowledge of content subjects, and that include annual targets of expected student achievement in English language proficiency and in content subjects.

(ii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (5 points)

(iii) The extent to which the proposed project encourages parental involvement. (5 points)

(d) *Quality of project personnel.* (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project.

(i) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2 points)

(ii) The qualifications, including relevant training and experience, of the project director. (4 points)

(iii) The qualifications, including relevant training and experience, of key project personnel. (4 points)

(e) *Adequacy of resources.* (5 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (5 points)

Note: For example, we look for information on the number of Native American LEP students to be served and the number of teachers that will participate in professional development activities in relation to the project costs.

(f) *Quality of the management plan.* (15 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (15 points)

Note: For example, we look for information on how management activities support the accomplishment of each objective, costs associated with the accomplishment of each objective, persons responsible for each management activity, and timeframes for the completion of each management activity.

(g) *Quality of the project evaluation.* (30 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

Note: For example, we look for information on how each proposed objective will be evaluated.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (15 points)

Note: For example, we look for information on how the proposed project will collect, analyze and report quantitative data on the *Performance Measures* discussed in section VI of this notice.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies. (5 points)

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance and report that provides the most current performance financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms. html.*

4. *Performance Measures:* Under GPRA, Federal departments and agencies must clearly describe the goals and objectives of programs, identify resources and actions needed to accomplish goals and objectives, develop a means of measuring progress made, and regularly report on achievement. One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants. The Department has developed the following GPRA performance measures for evaluating the overall effectiveness of the Native American and Alaska Native Children in School Program:

(i) The percentage of LEP students served by the program *who score proficient or above on the State reading assessment.*

(ii) The percentage of LEP students served by the program *who are making progress in learning English as measured by the State approved English language proficiency assessment.*

(iii) The percentage of LEP students served by the program *who are attaining proficiency in English as measured by the State approved English language proficiency assessment.*

Grantees will be expected to report on progress in meeting these GPRA performance measures for the Native American and Alaska Native Children in School Program in their Annual Performance Report and in their Final Performance Report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Trini Torres, 400 Maryland Avenue, SW., Potomac Center Plaza, Room 10065, Washington, DC 20202–6510. Telephone: (202) 245–7134, or by e-mail: *trinidad.torres-carrion@ed.gov.*

If you use TDD, call FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 18, 2007.

Margarita P. Pinkos,

Acting Assistant Deputy Secretary and Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. E7–20957 Filed 10–23–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Climate Change Science Program Product Development Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of teleconference meeting postponement.

SUMMARY: On October 17, 2007, the Department of Energy published a notice of open teleconference meeting of the Climate Change Science Program Product Development Advisory Committee 72 FR 58836. Today's notice is announcing the postponement of the teleconference meeting scheduled for October 29, 2007. The next meeting will be scheduled for later this year.

Issued in Washington, DC on October 18, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–20916 Filed 10–23–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC07–511–001, FERC–511]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

October 15, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of June 6, 2007 (72 FR 31304–05) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by November 20, 2007.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oirasubmission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at (202) 395–7345. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07–511–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *ferconlinesupport@ferc.gov,* 202–502–6652 or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–511 ''Application for Transfer of License''.
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902–0069.

The Commission is now requesting that OMB approve and reinstate with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 4(e) and 8 of the Federal Power Act (FPA). Section 4(e) authorizes the Commission to issue licenses for the construction, operation and maintenance of reservoirs, power houses and transmission lines or other facilities necessary for development and improvement of navigation and for the development, transmission, and utilization of power from bodies of water that Congress has jurisdiction over. Section 8 of the FPA provides that the voluntary transfer of any license can only be made with the written approval

of the Commission. Any successor to the licensee may assign the rights of the original license but is subject to all of the conditions of the license.

The information filed with the Commission is a mandatory requirement contained in the format of a written application for transfer of license, executed jointly by the parties to the proposed transfer. The transfer of a license may be occasioned by the sale or merger of a licensed hydroelectric project. It is used by the Commission's staff to determine the qualifications of the proposed transferee to hold the license, and to prepare the transfer of the license order. The Commission implements these requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 9 and 131.20.

5. *Respondent Description:* The respondent universe currently comprises 23 respondents (average) subject to the Commission's jurisdiction

6. *Estimated Burden:* 920 total hours, 23 respondents (average per year), 1 response per respondent, and 40 hours per response (average).

7. *Estimated Cost Burden to respondents:* 920 hours/2080 hours per years × $122,137 per year = $54,022. The cost per respondent is estimated to be on average $2,349.

Statutory Authority: Sections 4(e) and 8 of the Federal Power Act (16 U.S.C. 792–828c).

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20883 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC07–515–001, FERC–515]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for Omb Review

October 15, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of June 6, 2007 (72 FR 31305) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by November 20, 2007.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7345. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC07–515–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web Site at *www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web Site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at 202–502–6652 *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–515 ''Declaration of Intention''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0079.

The Commission is now requesting that OMB approve and reinstate with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Part I, Section 23(b) of the Federal Power Act (FPA). Section 23(b) authorizes the Commission to make a determination as to whether it has jurisdiction over a proposed hydroelectric project. Section 23(b) also requires that any person intending to construct project works on navigable commerce clause waters must file a declaration of their intention to do so with the Commission. If the Commission finds the proposed project will have an impact on ''interstate or foreign commerce'', then person intending to construct the project must obtain a Commission license or exemption before construction. Such sites are generally on streams defined as U.S. navigation waters, and over which the Commission has jurisdiction under its authority to regulate foreign and interstate commerce. The information is collected in the form of a written declaration, informing the Commission of the applicant's intent and used by Commission staff to research the jurisdictional aspects of the project. A finding of non-jurisdictional by the Commission eliminates a substantial paperwork burden for the applicant who might otherwise have to file for a license or an exemption application.

The information filed with the Commission is a mandatory requirement. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 Part 24.

5. *Respondent Description:* The respondent universe currently comprises 10 respondents (average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 800 total hours, 10 respondent (average per year), 1

response per respondent, and 80 hours per response (average).

7. *Estimated Cost Burden to respondents:* 800 hours / 2080 hours per years × $122,137 per year = $46,975.

Statutory Authority: Sections 23(b) of the Federal Power Act (16 U.S.C. 816)

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20884 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1297–000]

Chien Energy, LLC; Notice of Issuance of Order

October 17, 2007.

Chien Energy, LLC (Chien Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Chien Energy also requested waivers of various Commission regulations. In particular, Chien Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Chien Energy.

On October 16, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Chien Energy, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is November 15, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Chien Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Chien Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Chien Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20891 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–3–000]

Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

October 15, 2007.

Take notice that on October 3, 2007, Dominion Transmission, Inc (DTI), 120 Tredegar Street, Richmond, VA 23219, filed in Docket No. CP08–3–000 a prior notice request pursuant to sections 157.205, 157.208 and 157.211 of the Commission's regulations under the Natural Gas Act (NGA) and DTI's blanket certificate issued in Docket No. CP82–537–000 for authorization to plug and abandon two wells located in the Tioga Storage Complex in Tioga County, Pennsylvania, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, DTI filed its application on behalf of PPL Gas Utilities Corporation and as operator of the Tioga Storage Complex. DTI proposes to plug and abandon wells TW–201 and TW–206 located in the West End Tioga Storage Pool. The certificated physical parameters, including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity will remain unchanged.

Any questions concerning this application may be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, VA 23219, or telephone (804) 819–2877.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: December 14, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20881 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–9–000]

Enogex Inc.; Notice of Application for a Limited-Jurisdiction Certificate of Public Convenience and Necessity

October 15, 2007.

Take notice that on October 9, 2007, Enogex Inc. (Enogex), tendered for filing an application in abbreviated form

requesting that the Commission issue it a limited-jurisdiction certificate of public convenience and necessity authorizing Enogex to lease up to 800,000 Dth/d of intrastate pipeline capacity to Midcontinent Express Pipeline LLC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time October 22, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20882 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–15–009]

Entergy Services, Inc.; Notice of Filing

October 16, 2007.

Take notice that on October 5, 2007, in compliance to the Federal Energy Regulatory Commission's Opinion No. 488, issued October 25, 2006, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., filed a refund report. *Arkansas Electric Cooperative Corporation* v. *Entergy Arkansas, Inc.,* 117 FERC ¶ 61,099 (2006); *aff'd,* 119 FERC ¶ 61,314 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 5, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20871 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–286–003]

Exelon Corporation; Notice of Filing

October 17, 2007.

Take notice that on October 16, 2007, Exelon Corporation, on behalf of its subsidiary, commonwealth Edison Company tendered for filing supplements its Request for Limited Expansion of Scope of Existing Standards of Conduct Waiver as a result of new legislation by the State of Illinois, filed with the Commission in the above proceeding on September 12, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 24, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20889 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–457–000]

Iroquois Gas Transmission System, L.P.; Notice of Filing

October 16, 2007.

Take notice that on September 28, 2007, and supplemented on October 15, 2007, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, CT 06484–6211, filed an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity to construct and operate the 08/09 Expansion Project (Project) in New York and Connecticut. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Iroquois requests authority to construct and operate: (1) Three sections of new, 36-inch diameter pipeline looping and associated above ground facilities along its existing mainline in New York and Connecticut; (2) a new compressor station, 10,300 horsepower, in Milford, Connecticut; and (3) additional compression, 10,300 horsepower, and cooling facilities at the Brookfield compressor station in Brookfield, Connecticut. Iroquois also seeks a predetermination that the rates applicable to the 08/09 Expansion project to be rolled in with Iroquois' existing Eastchester Expansion Project rate case following the in-service date for the proposed facilities in which the Eastchester rates are subject to change. The estimated cost of the Project is approximately $163,000,000. Iroquois proposes the in-service date, under Phase I, of November 1, 2008.

Any questions regarding the application are to be directed to Paul W. Diehl, Senior Attorney, Iroquois Pipeline Operating Company, One Corporate Drive, Suite 600, Shelton, CT 06484, phone number (203) 925–7228.

On March 23, 2007, the Commission staff granted Iroquois's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF07–7–000 to staff activities involving the Market Access Project. Now, as of the filing of this application on September 28, 2007, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP07–457–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be file on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on November 6, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20877 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1157–000; ER07–1157–001]

Logan Wind Energy LLC; Notice of Issuance of Order

October 17, 2007.

Logan Wind Energy LLC (Logan Wind Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Logan Wind Energy also requested waivers of various Commission regulations. In particular, Logan Wind Energy requested that the Commission grant blanket approval under 18 CFR

part 34 of all future issuances of securities and assumptions of liability by Logan Wind Energy.

On October 16, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Logan Wind Energy, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is November 15, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Logan Wind Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Logan Wind Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Logan Wind Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20890 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF04–132–001]

North Texas Wind Center, LLC; Notice of Filing

October 16, 2007.

Take notice that on October 11, 2007, North Texas Wind Center, LLC, c/o Noble Environmental Power, LLC, 8 Railroad Avenue, Suite 8, Essex, CT 06426, on behalf of the NTWC–4 Project (NTWC–4) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to 18 CFR 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

NTWC–4 is small power production wind facility currently in development that consists of multiple wind turbine generators with an approximate net power production capacity of 78.3 MW. The facility will be located in Hansford County, Texas.

Interconnection of NTWC–4 will be with a transmission line owned by Xcel Energy, Inc. and operated by its operating subsidiary Southwestern Public Service Company (SPS). NTWC–4 also expects that SPS will be the electric utility that will provide the facility with supplementary, back-up and maintenance power.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20870 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF03–11–001]

North Texas Wind Center, LLC; Notice of Filing

October 16, 2007.

Take notice that on October 9, 2007, North Texas Wind Center, LLC, c/o Noble Environmental Power, LLC, 8 Railroad Avenue, Suite 8, Essex, CT 06426, on behalf of the NTWC–1 Project (NTWC–1) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to 18 CFR 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

NTWC–1 is small power production wind facility currently in development that consists of multiple wind turbine generators with an approximate net power production capacity of 76.7 MW. The facility will be located in Hansford County, Texas.

Interconnection of NTWC–1 will be with a transmission line owned by Xcel energy, Inc. and operated by its operating subsidiary Southwestern Public Service Company (SPS). NEWC–1 also expects that SPS will be the electric utility that will provide the

facility with supplementary, back up and maintenance power.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 8, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20875 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF03–12–001]

North Texas Wind Center, LLC; Notice of Filing

October 16, 2007.

Take notice that on October 9, 2007, North Texas Wind Center, LLC, c/o Noble Environmental Power, LLC, 8 Railroad Avenue, Suite 8, Essex, CT 06426, on behalf of the NTWC–2 Project (NTWC–2) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to 18 CFR 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

NTWC–2 is small power production wind facility currently in development that consists of multiple wind turbine generators with an approximate net power production capacity of 76.8 MW. The facility will be located in Hansford County, Texas.

Interconnection of NTWC–2 will be with a transmission line owned by Xcel Energy, Inc. and operated by its operating subsidiary Southwestern Public Service Company (SPS). NTWC–2 also expects that SPS will be the electric utility that will provide the facility with supplementary, back-up and maintenance power.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 8, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20876 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1300–000]

Reliant Energy Solutions Northeast, LLC; Notice of Issuance of Order

October 17, 2007.

Reliant Energy Solutions Northeast, LLC (RESN) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. RESN also requested waivers of various Commission regulations. In particular, RESN requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by RESN.

On October 16, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by RESN, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is November 15, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, RESN is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of RESN, compatible with the public interest, and

is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of RESN's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20892 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–421–003]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 15, 2007.

Take notice that on October 1, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 40N, with an effective date of November 1, 2007.

Transco states that the filing is being made in compliance with the ''Order Issuing Certificate'' issued by the Commission on April 12, 2007 in the captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time October 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20888 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–90–001]

Tres Palacios Gas Storage LLC; Notice of Compliance Filing

October 15, 2007.

Take notice that on October 5, 2007, Tres Palacios Gas Storage LLC (Tres Palacios) tendered for filing a compliance filing pursuant to the Commission order issued on September 20, 2007 in Docket Nos. CP07–90–000, *et al.* (Tres Palacios Gas Storage LLC, 120 FERC 61,253 (2007)).

Tres Palacios states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time October 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20880 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–452–001]

Trunkline Gas Company, LLC; Notice of Filing

October 15, 2007.

Take notice that on October 2, 2007, Trunkline Gas Company, LLC (Trunkline Gas), P.O. Box 4967, Houston, Texas 77210–4967, filed an abbreviated application pursuant to the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations requesting authorization to amend its certificate issued on April 23, 2007. Trunkline Gas seeks amended authorization to reflect a change in the maximum capacity of the NTX Expansion and a revised cost in the certificated facilities due to a contribution in aid of construction. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Trunkline Gas proposes to increase the maximum capacity of the NTX Expansion from 510,000 Dekatherms per day (Dth/d) to 625,000 Dth/d due to the relocation of Energy Transfer Partners, L.P.'s (Energy Transfer) interconnection with Trunkline Gas. Trunkline Gas will provide a contribution in aid of construction (CIAC) toward Energy Transfer's cost of construction of facilities to effectuate deliveries to Trunkline Gas in the amount of $40,000,000. The total cost for the Field Zone Expansion increases from $158.9 million to $198.9 million.

Any questions regarding the application are to be directed to Stephen T. Veatch, Regulatory Affairs, at (713) 989–7000, Trunkline Gas Company, LLC, 5444 Westheimer Road, Houston, Texas 77056.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 25, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20879 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 16, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP07–649–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission LLC submits Substitute Second Revised Sheet 404 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 10/1/07.

Filed Date: 10/10/2007.

Accession Number: 20071011–0228.

Comment Date: 5 p.m. Eastern Time on Monday, October 22, 2007.

Docket Numbers: RP08–21–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Sixth Revised Sheet 363 *et al.* to FERC Gas Tariff, Second Revised Volume 1–A.

Filed Date: 10/09/2007.

Accession Number: 20071010–0099.

Comment Date: 5 p.m. Eastern Time on Monday, October 22, 2007.

Docket Numbers: RP08–22–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Co submits First Revised Sheet 405A.02 to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 11/9/07.

Filed Date: 10/10/2007.

Accession Number: 20071011–0180.

Comment Date: 5 p.m. Eastern Time on Monday, October 22, 2007.

Docket Numbers: RP08–23–000.

Applicants: Avista Corporation.

Description: Avista Corp submits notice of cancellation of First Revised Sheet 45 *et al.* to FERC Gas Tariff, Volume 2, effective 4/30/07.

Filed Date: 10/09/2007.

Accession Number: 20071011–0179.

Comment Date: 5 p.m. Eastern Time on Monday, October 22, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–20850 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 17, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–6–000.

Applicants: Telocaset Wind Power Partners, LLC; High Prairie Wind Farm II, LLC; Old Trail Wind Farm, LLC; Horizon Wind Ventures I, LLC; 2007 Vento II, LLC; General Electric Capital

Corporation; Wachovia Investment Holdings, LLC.

Description: Telocaset Wind Power Partners, LLC *et al.* submits a joint application for indirect disposition of jurisdictional facilities.

Filed Date: 10/12/2007.

Accession Number: 20071016–0118.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: EC08–7–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corp submits an application requesting authorization to acquire Owner Participant interest from SGE (New York) Associates.

Filed Date: 10/12/2007.

Accession Number: 20071016–0120.

Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–6–000.

Applicants: Santa Rosa Energy Center, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Santa Rosa Energy Center, LLC.

Filed Date: 10/16/2007.

Accession Number: 20071016–5004.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 6, 2007.

Docket Numbers: EG08–7–000.

Applicants: Long Beach Peakers LLC.

Description: Exempt Wholesale Generator Notice of Self-Certification of Long Beach Peakers LLC.

Filed Date: 10/16/2007.

Accession Number: 20071016–5054.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 6, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–921–002.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits an amendment to the 7/23/07 compliance filing.

Filed Date: 10/15/2007.

Accession Number: 20071017–0107.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER08–49–000.

Applicants: Michigan Electric Transmission Co., LLC.

Description: Michigan Electric Transmission Co, LLC submits revisions to distribution-transmission interconnection agreement with Consumers Energy Co.

Filed Date: 10/12/2007.

Accession Number: 20071015–0296.

Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER08–50–000.

Applicants: E. ON U.S. LLC.

Description: E. ON. U.S., LLC on behalf of Kentucky Utilities Co submits a letter agreement with Big River Electric Corp.

Filed Date: 10/15/2007.

Accession Number: 20071017–0108.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER08–51–000.

Applicants: New York State Electric & Gas Corp.

Description: New York State Electric & Gas Corp submits a supplement to Rate Schedule FERC 117—Facilities Agreement with the Delaware County Electric Cooperative.

Filed Date: 10/15/2007.

Accession Number: 20071017–0109.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER08–52–000.

Applicants: New York State Electric & Gas Corp.

Description: New York State Electric & Gas Corp submits a supplement to Rate Schedule FERC 72—Facilities Agreement with the Municipal Board of the Village of Bath.

Filed Date: 10/15/2007.

Accession Number: 20071017–0110.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER08–53–000.

Applicants: Termoelectrica U.S., LLC.

Description: Report of Termoelectrica US, LLC re wholesale sales of electricity in-markets operated by the California Independent System Operator Corp.

Filed Date: 10/09/2007.

Accession Number: 20071017–0114.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER08–54–000.

Applicants: ISO New England Inc.

Description: ISO New England et al. jointly submits proposed revisions to Sections I and II of the ISO Tariff to comply with FERC's Order 890 preventing undue discrimination or preference in transmission service.

Filed Date: 10/11/2007.

Accession Number: 20071017–0118.

Comment Date: 5:00 p.m. Eastern Time on Thursday, November 1, 2007.

Docket Numbers: ER08–55–000.

Applicants: Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC.

Description: Midwest Independent Transmission System Operator, Inc and PJM Interconnection, LLC submits proposed revisions to the Congestion Management Process of their Joint Operating Agreement.

Filed Date: 10/15/2007.

Accession Number: 20071017–0162.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER08–56–000; ER08–66–000.

Applicants: Avista Corporation; Northwestern Corporation.

Description: Avisata Corp & NorthWestern Corp submit two non-confirming long-term service agreements with Northwestern Corp-Montana Transmission Function.

Filed Date: 10/16/2007.

Accession Number: 20071017–0111.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 6, 2007.

Docket Numbers: ER08–57–000.

Applicants: AB Energy NE, Pty. Ltd.

Description: AB Energy NE, Pty Ltd submits a notice of cancellation of its FERC Electric Tariff, Original Volume 1.

Filed Date: 10/15/2007.

Accession Number: 20071017–0052.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER08–58–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc. submits a supplement to Rate Schedule Filings.

Filed Date: 10/16/2007.

Accession Number: 20071017–0113.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 6, 2007.

Docket Numbers: ER08–59–000

Applicants: AB Energy NY, Pty. Ltd.

Description: AB Energy NY, Pty Ltd. submits a notice of cancellation of its FERC Electric Tariff, Original Volume 1.

Filed Date: 10/15/2007.

Accession Number: 20071017–0053.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER08–60–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a Network Integration Transmission Service Agreement and Network Operating Agreement.

Filed Date: 10/16/2007.

Accession Number: 20071017–0112.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 6, 2007.

Docket Numbers: ER08–61–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits an emergency request for changes to Market Rule 1.

Filed Date: 10/16/2007.

Accession Number: 20071016–0268.

Comment Date: 5 p.m. Eastern Time on Thursday, October 25, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–67–001.

Applicants: National Grid USA.

Description: Amendment to and Notice of Partial Withdrawal of Application for Authorization to Issue Securities Under Section 204 of the Federal Power Act, and Motion for Waiver of 15–Day Waiting Period Under Commission Rule 216 of National Grid USA.

Filed Date: 10/15/2007.

Accession Number: 20071015–5140.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–90–001.

Applicants: MidAmerican Energy Company.

Description: Mid American Energy's substitute tariff sheet to reflect the correct methodology for calculation of transmission reserve margin in its Open Access Transmission Tariff—Attachment C filed September 11, 2007.

Filed Date: 10/16/2007.

Accession Number: 20071016–5040.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 6, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–20902 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

October 18, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–8–000.

Applicants: Plum Point Energy Associates, L.L.C.

Description: Notice of Self Certification of Exempt Wholesale Generator Status of Plum Point Energy Associates, L.L.C.

Filed Date: 10/17/2007.

Accession Number: 20071017–5029.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 07, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–534–003.

Applicants: Ingenco Wholesale Power, L.L.C.

Description: Notice of Change in Status of Ingenco Wholesale Power, L.L.C.

Filed Date: 10/17/2007.

Accession Number: 20071017–5014.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 07, 2007.

Docket Numbers: ER07–1318–001.

Applicants: Wellsboro Electric Company.

Description: Wellsboro Electric Co submits a Supplement to the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 10/17/2007.

Accession Number: 20071018–0077.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 07, 2007.

Docket Numbers: ER08–38–001.

Applicants: Northern Renewable Energy (USA) Ltd.

Description: Northern Renewable Energy (USA) Ltd submits Appendix A to its 10/10/07 submittal of an application.

Filed Date: 10/16/2007.

Accession Number: 20071018–0084.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 23, 2007.

Docket Numbers: ER08–40–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC requests that the language in footnote 2 of the 10/11/07 transmittal letter be replaced.

Filed Date: 10/16/2007.

Accession Number: 20071018–0098.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 06, 2007.

Docket Numbers: ER08–62–000.

Applicants: Peetz Table Wind Energy, LLC.

Description: Peetz Table Wind Energy, LLC submits a Jurisdictional Agreement with Logan Wind Energy, LLC.

Filed Date: 10/16/2007.

Accession Number: 20071018–0086.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 06, 2007.

Docket Numbers: ER08–63–000.

Applicants: Lincoln Generating Facility, LLC.

Description: Lincoln Generating Facility, LLC submits a tariff pursuant to which it will provide up to 320 MW of black start capacity in the Commonwealth Edison Co.

Filed Date: 10/16/2007.

Accession Number: 20071018–0087.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 06, 2007.

Docket Numbers: ER08–64–000.

Applicants: California Independent System Operator C.

Description: California Independent System Operator submits proposed amendment to the currently-effective ISO Tariff.

Filed Date: 10/16/2007.

Accession Number: 20071018–0085.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 06, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–26–004.

Applicants: Entergy Gulf States, Inc.

Description: Entergy Gulf States Inc *et al.* submits additional information with respect to their request for relief under FPA.

Filed Date: 10/16/2007.

Accession Number: 20071018–0088.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 23, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis,

Acting Deputy Secretary.

[FR Doc. E7–20903 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF07–15–000]

Algonquin Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed East to West Hubline Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

October 16, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will identify and address the environmental impacts that could result from the construction and operation of the East to West HubLine Expansion Project (E2W Project or Project). The E2W Project is proposed by Algonquin Gas Transmission, LLC (Algonquin), which is an indirect wholly owned subsidiary of Spectra Energy Corp. The Commission will use the EIS in its decision-making process to determine whether or not to authorize the Project. This notice describes the proposed Project facilities and explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help determine the issues that need to be evaluated in the EIS. Please note that the scoping period for the Project will close on November 21, 2007.

Comments on the Project may be submitted in written form or verbally. In lieu of or in addition to sending written comments, you are invited to attend the public scoping meetings that have been scheduled in the Project area. These meetings are scheduled for November 5, 2007 in Randolph, Massachusetts; November 7, 2007 in North Andover, Massachusetts; and November 8, 2007 in Norwich, Connecticut. Further instructions on how to submit comments and additional details of the public scoping meetings are provided in the Public Participation section of this notice.

The FERC will be the lead federal agency for the preparation of the EIS and will prepare the document to satisfy the requirements of the National Environmental Policy Act (NEPA). The document will be used by the FERC to consider the environmental impacts that could result if it authorizes Algonquin's Project by issuing a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act. It is the FERC's goal that other federal agencies will participate in the environmental review process as cooperating agencies to satisfy their respective NEPA responsibilities.

The Project must also undergo an environmental review pursuant to the Massachusetts Environmental Policy Act (MEPA). The Massachusetts Executive Office of Energy and Environmental Affairs (MEEA) is the lead state agency with responsibility for ensuring compliance with the MEPA regulations for interstate natural gas pipeline projects. The MEPA regulations allow use of a Special Review Procedure that would establish a coordinated review of the Project by the FERC and the MEEA. Establishment of a coordinated review would enable the NEPA EIS (plus an addendum document) to serve as the Environmental Impact Report (EIR) required by MEPA. It is anticipated that the FERC and the MEEA will conduct a coordinated NEPA/MEPA review of the E2W Project to the maximum extent feasible.

The Massachusetts Energy Facility Siting Board (MEFSB) is an independent board that licenses major energy facilities in Massachusetts and is charged with ensuring a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. The MEFSB has no authority over the siting of interstate natural gas facilities; however, it represents the citizens of Massachusetts before the FERC on cases involving the construction of applicable energy infrastructure in Massachusetts. The two Massachusetts public scoping meetings announced in this notice will be joint scoping meetings with participation by the MEFSB.

The Connecticut Siting Council (CSC) is an independent board that licenses major energy facilities in Connecticut. The CSC regulates facility siting to balance the need for adequate and reliable public services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state. Similar to the MEFSB, the CSC has no authority over the siting of interstate natural gas facilities; however, it may become a party before the FERC on cases involving the construction of applicable energy infrastructure in Connecticut. The CSC will participate in the FERC's Connecticut scoping meeting and will announce independent hearings at a later date.

With this notice, we [1] are asking these and other federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues and leaders of tribal nations to cooperate formally with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated Algonquin's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described in the Public Participation section of this notice.

This notice is being sent to affected landowners, including landowners potentially affected by some of the alternatives under consideration; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by an Algonquin representative about the acquisition of an easement to construct, operate, and maintain the proposed Project facilities. Algonquin would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

Algonquin proposes to modify portions of its existing pipeline system in Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. The E2W Project consists of the construction and operation of 46.1 miles of various diameter pipeline and associated ancillary pipeline facilities. Of this total, 13.0 miles consist of new pipeline in Massachusetts and 33.1 miles consist of the replacement of existing pipeline in Massachusetts and Connecticut. A significant portion of the 46.1 miles of the proposed pipeline facilities would be either within the existing Algonquin right-of-way or adjacent to an existing powerline right-of-way. No new right-of-way corridors would be created based on the alignment as currently proposed with the exception of several minor alignment deviations to facilitate construction.

In addition, Algonquin proposes to construct 2 new compressor stations in Massachusetts, install over-pressure protection regulation at 4 sites in Massachusetts, and install minor modifications at 5 existing compressor stations and 29 existing meter stations along Algonquin's system in the 5 Project states as described below. A general overview of the major Project facilities is shown in Appendix 1.[2]

Specifically, the facilities proposed by Algonquin include the following:

- *I–10 Extension*—construction of approximately 13.0 miles of new 36-inch-diameter pipeline in Norfolk County, Massachusetts;
- *Q–1 System Replacement*—installation of approximately 18.5 miles of 36-inch-diameter pipeline that would replace a segment of an existing 24-inch-diameter pipeline in Norfolk County, Massachusetts;
- *E–3 System Replacement*—installation of approximately 11.0 miles of 12-inch-diameter pipeline that would replace a segment of an existing 6- and 4-inch-diameter pipeline in New London County, Connecticut;
- *C–1 System Replacement*—installation of approximately 3.6 miles of 24-inch-diameter pipeline that would replace a segment of an existing 10-inch-diameter pipeline in New Haven County, Connecticut;
- Two new compressor stations including:
  - *Boxford Compressor Station*—a 10,300-horsepower (hp) compressor station in Essex County, Massachusetts; and
  - *Rehoboth Compressor Station*—a 15,000-hp compressor station in Bristol County, Massachusetts;
- Modifications to five existing compressor stations to accommodate bi-directional flow along Algonquin's system including:
  - Burrillville Compressor Station in Providence County, Rhode Island;
  - Chaplin Compressor Station in Windham County, Connecticut;
  - Cromwell Compressor Station in Middlesex County, Connecticut;
  - Southeast Compressor Station in Putnam County, New York; and
  - Hanover Compressor Station in Morris County, New Jersey;
- Aboveground over-pressure protection regulation at two existing meter stations (Weymouth and Sharon Meter Stations) and at two new regulator stations (end of the I–10 Extension and end of the Q–1 System) along the Algonquin system in Massachusetts;
- Installation of gas chromatographs at 29 existing meter stations in Massachusetts (9), Connecticut (11), Rhode Island (2), New York (5), and New Jersey (2);
- Installation of mainline valves along the proposed pipeline facilities in Massachusetts and Connecticut; and
- Installation of pig [3] launcher and receiver facilities to connect with the existing Algonquin facilities in Massachusetts and Connecticut.

Algonquin indicates that the proposed Project would provide increased natural gas supplies and enhanced system reliability to natural gas distributors throughout the New England region. Once completed, the Project would be capable of transporting up to 1.145 million dekatherms per day of natural gas from increased gas supplies, including liquefied natural gas-source gas, entering the eastern end of the Algonquin system for redelivery to high growth markets in the Northeast region.

Algonquin anticipates that construction of the E2W Project would begin in April 2009, with a projected in-service date of November 2009.

Land Requirements for Construction

Algonquin indicates that construction of its proposed pipeline and aboveground facilities would require about 482 acres of land, including land requirements for the construction right-of-way, temporary extra work areas, access roads, pipe storage and contractor yards, and aboveground facilities. Following construction, about 253 acres of land would be retained as permanent right-of-way for the pipeline and operation of the aboveground

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Internet *Web site* (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the Availability of Additional Information section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Algonquin by calling 1–800–788–4143.

[3] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

facility sites. The remaining 229 acres of land would be restored and allowed to revert to its former use.

The centerline of the proposed I–10 Extension pipeline would generally be situated 5 feet inside the existing NSTAR Gas & Electric Corporation (NSTAR) powerline right-of-way. The pipelines for the Q–1, E–3, and C–1 Systems would be installed in the same trench as the pipelines they are replacing to the extent practicable. This same-trench replacement method of construction is referred to by Algonquin as the take-up and relay method. In general, the construction rights-of-way for the new and replacement pipelines would range from 75 to 85 feet wide with additional temporary workspace needed at certain feature crossings and to stockpile trench spoil and rock generated from trench excavation. For the majority of the route, the construction rights-of-way would overlap the existing, cleared permanent rights-of-way of Algonquin and NSTAR by various amounts. After construction, a 30-to 50-foot-wide permanent right-of-way would be retained.

The proposed Boxford Compressor Station would require approximately 8.2 acres of land for permanent development of the compressor station and associated roads and piping. However, Algonquin is considering the acquisition of land parcels totaling approximately 157 acres for the station. An alternative site to the Boxford Compressor Station, referred to as the Danvers Compressor Station Site Alternative, is also under consideration. The alternative site is approximately 50 acres in size and is located northwest and adjacent to the Danvers Landfill. The proposed Rehoboth Compressor Station would require approximately 8.8 acres of land for permanent development of the compressor station and associated roads and piping. Algonquin is considering the acquisition of land parcels totaling approximately 97 acres for the Rehoboth Compressor Station.

The modifications to the five existing compressor stations would occur within the fenceline of the existing developed compressor station sites. The over-pressure protection regulation at the two existing meter stations would be installed within previously disturbed areas at the meter station sites. The over-pressure regulator stations at the two new sites would require approximately 1 acre at each site. The installation of gas chromatographs at the 29 existing meter stations along the Algonquin system would occur within the fenceline of the existing developed meter station site. The mainline valves and pig launchers and receivers would be installed within the permanent right-of-way and would not require additional land.

The EIS Process

NEPA requires the FERC to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EIS we are preparing is intended to give the FERC and cooperating agencies the necessary information to consider potential environmental impacts during each agency's respective review.

Although no formal application has been filed with the FERC, we have already initiated our NEPA review under the FERC's Pre-Filing Process, which was established in Docket No. RM05–31–000 and Order No. 665. The purpose of the Pre-Filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. The MEEA, MEFSB, and CSC have agreed to begin their reviews in conjunction with the Pre-Filing Process to the extent feasible. A diagram summarizing the environmental review process for the Project is attached to this notice as Appendix 2.

The FERC staff has already started to meet with Algonquin, jurisdictional agencies, and other interested stakeholders to discuss the Project and identify issues and concerns. As part of our Pre-Filing Process review, representatives from the FERC participated in public open houses sponsored by Algonquin in the Project area between September 25 and October 11, 2007 to explain the environmental review process to interested stakeholders and take comments about the Project. During November 2007, we plan to continue the Pre-Filing Process review by conducting interagency and public scoping meetings in the Project area to solicit comments and concerns about the Project.

By this notice, we are formally announcing our preparation of the EIS and requesting additional agency and public comments to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed action. If you provide comments at a scoping meeting, you do not need to resubmit the same comments in response to this notice.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected and potentially affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. The comment period on the draft EIS will be coordinated to the extent possible with other jurisdictional agencies.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed Project. We have already identified a number of issues and alternatives that we think deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Algonquin, and the scoping comments received to date. This preliminary list of issues and alternatives may be changed based on your comments and our additional analysis.

- Geology and Soils:
  - Assessment of potential geological hazards.
  - Erosion and sedimentation control.
  - Assessment of invasive weed control plans.
  - Right-of-way restoration.
- Water Resources:
  - Impact on groundwater supplies.
  - Evaluation of temporary and permanent impacts on wetlands, restoration of wetlands, and development of appropriate wetland mitigation options.
  - Effect of pipeline crossings on perennial and intermittent waterbodies, including Norwichtown Brook, Bobbin Mill Brook, Main Brook, Honeypot Brook, and an unnamed tributary to the Quinnipiac River.
  - Assessment of methods to cross major waterbodies, including the Weymouth Fore, Charles, and Neponset Rivers in Massachusetts and the Shetucket River in Connecticut.
  - Assessment of contingency plans for frac-outs associated with horizontal directional drills.
  - Assessment of alternative waterbody crossing methods.
- Fish, Wildlife, and Vegetation:
  - Effect on coldwater and sensitive fisheries and essential fish habitat.
  - Impacts on vernal pools.
  - Effect on wildlife resources and their habitat.
  - Effect on migratory birds.
  - Assessment of construction time window restrictions.

○ Effect on riparian vegetation.

○ Assessment of measures to successfully revegetate the right-of-way.

- Special Status Species:

○ Potential effect on federally listed species.

○ Potential effect on state-listed sensitive species, including the Eastern box turtle, bridle shiner, oak hairstreak, mocha emerald, and blue-spotted salamander.

- Cultural Resources:

○ Effect on historic and prehistoric sites.

○ Native American and tribal concerns.

- Land Use, Recreation and Special Interest Areas, and Visual Resources:

○ Impacts on residential areas.

○ Blasting in proximity to residences.

○ Impacts on the Cranberry Brook Watershed Area of Critical Environmental Concern (ACEC).

○ Visual impacts.

- Socioeconomics:

○ Effects on transportation and traffic.

○ Effects of construction workforce demands on public services and temporary housing.

- Air Quality and Noise:

○ Effects on the local air quality and noise environment from construction and operation of the proposed facilities.

- Reliability and Safety:

○ Assessment of hazards associated with natural gas pipelines.

- Alternatives:

○ Assessment of existing systems, alternative system configurations, and alternative routes to reduce or avoid environmental impacts.

○ Evaluation of alternatives to avoid the Cranberry Brook Watershed ACEC.

○ Assessment of alternative compressor station locations, including the Danvers Compressor Station Site Alternative to the Boxford Compressor Station.

- Cumulative Impact:

○ Assessment of the effect of the proposed Project when combined with other past, present, or future actions in the same region.

Public Participation

You can make a difference by providing us with your specific comments or concerns about Algonquin's proposal. By becoming a commentor, your concerns will be addressed in the FERC's EIS and considered during the MEPA review. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen the environmental impact. The more specific your comments, the more useful they will be. To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments on this Project. See Title 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Before you can submit comments you will need to create a free account by clicking on ''Sign-up'' under ''New User.'' You will be asked to select the type of submission you are making. This type of submission is considered a ''Comment on Filing.'' Your comments must be submitted electronically by November 21, 2007.

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC and Boston, Massachusetts on or before November 21, 2007 and carefully follow these instructions:

Send an original and two copies of your letter to:

- Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of the Gas Branch 3, DG2E;
- Reference Docket No. PF07–15–000 on the original and both copies; and
- Send an additional copy of your letter to:

Selma H. Urman, Esq., Massachusetts Energy Facilities Siting Board, One South Station, Boston, MA 02110; or

Christine Lepage, Connecticut Siting Council, Ten Franklin Square, New Britain, CT 06051.

Your letters to the MEFSB or CSC should also reference Docket No. PF07–15–000.

Three public scoping meetings have been scheduled in the Project area to provide another opportunity to offer comments on the proposed Project. The two public scoping meetings in Massachusetts will be joint scoping meetings with participation by the MEFSB pursuant to its responsibilities outlined in 980 Code of Massachusetts Regulations section 7.07(9)(a).[4] Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meetings will be generated so that your comments will be accurately recorded. All meetings will begin at 7 p.m. (EST) and end at 10 p.m., at the following locations:

Date	Location
Monday, November 5, 2007	Holiday Inn Boston-Randolph, 1374 North Main Street, Randolph, MA 02368, (781) 961–1000.
Wednesday, November 7, 2007	Knights of Columbus Hall, 505 Sutton Street, North Andover, MA 01845, (978) 688–6812.
Thursday, November 8, 2007	Norwich City Hall, Room 335, 100 Broadway, Norwich, CT 06360.

Once Algonquin formally files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may *not* request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

Everyone who responds to this notice or provides comments throughout the EIS process will be retained on the mailing list. If you do not want to send

[4] A separate scoping meeting for the MEPA process will be scheduled by the MEEA at a later date.

comments at this time but still want to stay informed and receive copies of the draft and final EISs, you must return the Mailing List Retention Form (Appendix 3). If you do not send comments or return the Mailing List Retention Form asking to remain on the mailing list, you will be taken off the mailing list.

Availability of Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs at 1–866–208 FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., PF07–15). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as Orders, notices, and rulemakings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

To request additional information on the proposed Project or to provide comments directly to the Project sponsor, you can contact Algonquin by calling toll free at 1–800–788–4143. Also, Algonquin has established an Internet Web site at *http://www.easttowestexpansion.com*. The Web site includes a description of the Project, an overview map of the pipeline route, links to related documents, and photographs of the Project area. Algonquin will update the Web site as the environmental review of its Project proceeds.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20874 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–427–000]

PetroLogistics Natural Gas Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed PetroLogistics Gas Storage Project and Request for Comments on Environmental Issues

October 17, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the PetroLogistics Gas Storage Project involving construction and operation of facilities by PetroLogistics Natural Gas Storage, LLC (PetroLogistics) in Iberville Parish, Louisiana.[1] These facilities would consist of one injection/withdrawal storage well, various diameter gas header, intereconnect, and lateral pipelines totaling 13.73 miles, one new 20,000 horsepower (hp) electric compressor station, five meter stations and two mainline valves. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice PetroLogistics provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

[1] PetroLogistics's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

PetroLogistics proposes to build and operate a high-deliverability, multi-cycle natural gas storage facility and appurtenant facilities in an existing brine cavern in the Choctaw Salt Dome located 4 miles northwest of the city of Plaquemine, Louisiana. The project would use one cavern within the Choctaw Salt Dome which currently is the site of up to nine caverns used as part of the U.S. Strategic Petroleum Reserve operated by the U.S. Department of Energy. This project would provide a working gas capacity of approximately 9 billion cubic feet and maximum daily injection and withdrawal capabilities of up to 150 to 300 million cubic feet per day.

PetroLogistics seeks authority to construct and operate:

- One 20,000 hp electric compressor station on a 2 acre site;
- One 350-foot-long 24-inch-diameter interconnect pipeline;
- 7.3 miles of 24-inch-diameter natural gas header pipeline connecting the compressor station and the Florida Gas Transmission Company (FGT), CrossTex LIG Pipeline Company (Crosstex)/Bridgeline Pipeline System (Bridgeline) and Texas Eastern Transmission Company (TETCO) interconnects;
- 5.83 miles of 16-inch-diameter interconnect pipeline from the Bridgeline/CrossTex tie-in to the Southern Natural Gas Company (SONAT) pipeline interconnect;
- A 0.60-mile-long TETCO lateral from the TETCO Lateral Meter Station; five meter stations/interconnects (FGT, Bridgeline, Crosstex, TETCO and SONAT Meter Stations);
- And two mainline valves.

PetroLogistics requests certification by December 31, 2007.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require disturbance of 137 acres of land, including 47 acres under existing permanent easement, 40 acres to be added as new permanent easement or ownership, and 53 acres as temporary construction right-of-way that would be restored to previous land use following

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

construction. PetroLogistics would use a 75-foot-wide construction right-of-way width 40-foot-wide operational right-of-way for the installed pipelines.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Wetlands and fisheries;
- Vegetation and wildlife;
- Threatened and endangered species;
- Land use;
- Cultural resources;
- Air quality and noise;
- Reliability and safety; and
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by PetroLogistics. This preliminary list of issues may be changed based on your comments and our analysis.

- Horizontal directional drill crossing of eight perennial waterways, including Wilbert's Canal, Bayou Jacob, Bayou Plaquemine, Bayou Tigre, and other unnamed canals;
- Impact of 15 acres of emergent wetlands, 17 acres of forested wetlands, and 66 acres of agricultural land;
- Potential clearing of cypress and tupelo trees;
- Potential impacts to a crawfish farm;
- Visual impacts of one reworked injection/withdrawal well;
- Compressor station operational noise impacts for residences located northeast of the site; and
- Adjacent to crude oil storage caverns operated as part of the U.S. Strategic Petroleum Preserve.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *an original and two* copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 2.
- Reference Docket No. CP07–427–000.
- Mail your comments so that they will be received in Washington, DC on or before November 15, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental

agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits (i.e., enter PF06–398) in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20897 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–095]

Georgia Power Company; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 16, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2413–095.

c. *Date filed:* October 4, 2007.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Project.

f. *Location:* The project is located on Lake Oconee in Putnam County, Georgia. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Lee Glenn, Georgia Power Company, 125 Wallace Dam Road, NE., Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail *Rebecca.martin@ferc.gov*.

j. *Deadline for filing comments and or motions:* November 16, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2413–095) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to allow Hilpine Builders to construct a 4-slip community dock and a 10-slip community dock near an existing 10-slip dock. The applicant would also construct an additional 100 linear feet of seawall. The docks would be part of the Phoenix Shores Phase II Development on the Lick Creek section of Lake Oconee.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20873 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12495–002, Project No. 13048–000]

Cascade Creek, LLC, Whatcom County Government, WA; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 15, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:*

Cascade Creek, LLC, filed the application for Project No. 12495–000 October 2, 2007, at 8:29 a.m.

Whatcom County Government, WA filed the application for Project No. 13048–000 on October 2, 2007, at 8:41 a.m.

c. *Name of the project is Cascade Creek Project:* The project would be located On Swan Lake, Falls Lake, and Cascade Creek, Wrangell-Petersburg Borough, Alaska. The proposed would be located within the Tongass National Forest on lands owned by the U.S. Forest Service.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Cascade Creek, LLC: Mr. Chris Spens, Manager, 3633 Alderwood Avenue, Bellingham, WA 98225, (360) 738–9999. Whatcom County Government, WA: Mr. Peter Kremen, Executive, Whatcom County, 311 Grand Avenue, Bellingham, WA, (360) 676–6716.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12795–002, or P–13048–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by the Cascade Creek, LLC, would consist of: (1) The existing natural reservoir would have a surface area of 579 acres with a storage capacity of 25,000 acre-feet and normal water surface elevation of 1,520 feet mean sea level, (2) a proposed lake tap intake structure, (3) a proposed 4,000-foot long upper Tunnel, (4) a proposed 2,500-foot-long, 8-foot-diameter buried steel upper penstock, (5) a proposed 2,000-foot-long, 12-foot-diameter unlined lower tunnel, (6) a proposed 6,800-foot-long, 8-foot diameter buried steel lower penstock, (7) a proposed powerhouse containing four generating units having a total installed capacity of 80 megawatts, (8) a proposed 20-mile-long 138 kilovolt transmission line, and (9) appurtenant facilities. The project would have an annual generation of 200 gigawatt-hours that would be sold to a local utility.

The project proposed by Whatcom County Government, WA would consist of: (1) The existing natural reservoir would have a surface area of 579 acres with a storage capacity of 25,000 acre-feet and normal water surface elevation of 1,520 feet mean sea level, (2) a proposed lake tap intake structure, (3) a proposed 4,000-foot long upper Tunnel, (4) a proposed 2,500-foot-long, 8-foot-diameter buried steel upper penstock, (5) a proposed 2,000-foot-long, 12-foot-diameter unlined lower tunnel, (6) a proposed 6,800-foot-long, 8-foot diameter buried steel lower penstock, (7) a proposed powerhouse containing four generating units having a total installed capacity of 70 megawatts, (8) a proposed 23-mile-long 138 kilovolt transmission line, and (9) appurtenant facilities. The project would have an annual generation of 250 gigawatt-hours that would be sold to a local utility.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

k. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

l. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental

impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20885 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 12863–000

FFP Project 21, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 15, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12863–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* FFP Project 21, LLC.

e. *Name of the Project:* Eighty One Mile Point Project.

f. *Location:* The project would be located on the Mississippi River in Ascension Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 21, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact*: Patricia W. Gillis, (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12863–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 2,850 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 57-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 249.66-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to

submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20886 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12864–000]

FFP Project 15, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 15, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12864–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* FFP Project 15, LLC.

e. *Name of the Project:* Woodland Light Project.

f. *Location:* The project would be located on the Mississippi River in St. John the Baptist Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 15, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12864–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 1,100 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 22-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 96.36-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a

competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20887 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12866–000]

FFP Project 10, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 17, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12866–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* FFP Project 10, LLC.

e. *Name of the Project:* Avondale Bend Project.

f. *Location:* The project would be located on the Mississippi River in Jefferson Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 10, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12866–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 900 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 18-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 78.84-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should

so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20893 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12912–000]

FFP Project 57, LLC ; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 17, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12912–000.

c. *Date Filed:* August 6, 2007.

d. *Applicant:* FFP Project 57, LLC.

e. *Name of the Project:* McKinley Crossing Project.

f. *Location:* The project would be located on the Mississippi River in St. Louis County, Illinois and St. Claire County, Illinois. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 57, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12912–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1)

1050 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 22-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 91.98-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20894 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12913–000]

FFP Project 58, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 17, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12913–000.

c. *Date Filed:* August 6, 2007.

d. *Applicant:* FFP Project 58, LLC.

e. *Name of the Project:* Wilson Island Project.

f. *Location:* The project would be located on the Mississippi River in St. Louis County, Missouri and Madison County, Illinois. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 58, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the

Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12913–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 2950 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 59-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 258.42-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20895 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12914–000]

FFP Project 53, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 17, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12914–000.

c. *Date Filed:* August 6, 2007.

d. *Applicant:* FFP Project 53, LLC.

e. *Name of the Project:* Cape Bend Project.

f. *Location:* The project would be located on the Mississippi River in Cape Girardeau County, Missouri and Alexander County, Illinois. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 53, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12914–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 1550 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 31-megawatts, (2) a proposed transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 135.78-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20896 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2101–084; Project No. 2155–024]

Sacramento Municipal Utility District, California; Pacific Gas & Electric Company, California; Notice of Intent To Hold a Public Meeting To Discuss the Draft Environmental Impact Statement for the Upper American River Hydroelectric Projects

October 15, 2007.

On September 21, 2007, the Commission issued the Upper American River Hydroelectric Project and Chili Bar Hydroelectric Project Draft Environmental Impact Statement (draft EIS) and mailed it to resource and land management agencies, interested organizations, and individuals.

The Environmental Protection Agency noticed the draft EIS in the **Federal Register** on September 28, 2007 (72 FR 55201); comments are due November 13, 2007. The draft EIS evaluates the environmental consequences and developmental benefits of issuing new licenses for operating and maintaining the Upper American River Project and the Chili Bar Project, which are located in El Dorado and Sacramento Counties, California. Besides evaluating the projects as they now operate, the draft EIS evaluates the projects with the Settlement Agreement and with staff-recommended measures.

The public meeting, which will be recorded by an official stenographer, is scheduled as follows.

Date: Monday, November 5, 2007.

Time: 7–9:30 p.m. (PST).

Place: Best Western Placerville Inn, 6850 Green Leaf Drive, Placerville, CA, 95667–6228, Phone: 530–622–9100.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS for the Commission's public record.

For further information, contact James Fargo at (202) 502–6095 or at *james.fargo@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20878 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Board of Directors/Members Committee Meeting and Southwest Power Pool Regional State Committee Meeting

October 16, 2007.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool (SPP) Regional State Committee Board of Directors, SPP Members Committee and SPP Board of Directors as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee Annual Meeting

October 29, 2007 (1 p.m.–5 p.m. CST), DoubleTree Hotel at Warren Place, 6110 South Yale Ave., Tulsa, OK 74136, 918–495–1000.

SPP Board of Directors/Members Committee and Annual Meeting of the Members

October 30, 2007 (8 a.m.–3 p.m. CST), DoubleTree Hotel at Warren Place, 6110 South Yale Ave., Tulsa, OK 74136, 918–495–1000.

The discussions may address matters at issue in the following proceedings:

Docket No. ER05–799, Southwest Power Pool, Inc.
Docket No. ER05–526, Southwest Power Pool, Inc.
Docket No. EL06–83, Southwest Power Pool, Inc.
Docket No. ER06–448, Southwest Power Pool, Inc.
Docket No. ER06–451, Southwest Power Pool, Inc.
Docket No. ER06–767, Southwest Power Pool, Inc.
Docket Nos. ER06–1485 and ER07–266, Xcel Energy Services, Inc.
Docket No. EL06–71, *Associated Electric Cooperative, Inc.* v. *Southwest Power Pool.*
Docket No. ER07–319, Southwest Power Pool, Inc.
Docket No. ER07–371, Southwest Power Pool, Inc.
Docket No. EL07–27, East Texas Electric Cooperative, Inc., *et al.* and *Docket No.* ER07–396, Southwest Power Pool, Inc.
Docket No. ER07–643, Southwest Power Pool, Inc.
Docket No. ER07–1099, Southwest Power Pool, Inc.
Docket No. ER07–1311, Southwest Power Pool, Inc.
Docket No. ER07–1319, Southwest Power Pool, Inc.
Docket No. ER07–1320, Southwest Power Pool, Inc.
Docket No. ER07–1248, Southwest Power Pool, Inc.
Docket No. ER07–1417, Midwest Independent System Operator, Inc.
Docket No. EL07–87, *Xcel Energy Services Inc.* v. *Southwest Power Pool, Inc., John Deere Wind Energy.*

These meetings are open to the public.

For more information, contact John Rogers, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (202) 502–8564 or *john.rogers@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20872 Filed 10–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rate extension and opportunities for public review and comment.

SUMMARY: Southeastern Power Administration (Southeastern) proposes to extend existing schedules of rates and charges applicable to the sale of power from the Cumberland System of Projects to be effective for approximately a seven-month period, from February 25, 2008 to September 30, 2008. Additionally, opportunities will be available for interested persons to review the rates and supporting studies and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before November 23, 2007.

ADDRESSES: Written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, GA 30635–6711.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Administrator, by order issued February 28, 2007, confirmed and approved on a final basis Wholesale Power Rate

Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F applicable to Cumberland System of Projects power for a period ending February 24, 2008.

Discussion: The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually to some customers and 1800 hours of energy annually to other customers with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) marketing area (Outside Customers). TVA also was allocated capacity but receives any energy not allocated to Outside Customers. The rates approved by the Federal Energy Regulatory Commission (the Commission) were designed to have a capacity charge that included 1500 hours of energy. In addition, the rates have an excess energy charge for energy in excess of the 1500 hours per kilowatt annually. Due to restrictions on the operation of the Wolf Creek Project imposed by the U.S. Army Corps of Engineers as a precaution to prevent a failure of the dam, Southeastern is not able to provide peaking capacity to these customers. Southeastern has implemented an interim operating plan for the Cumberland System to provide these customers with energy that does not include schedulable capacity. Because the rate design incorporated in the previous rate schedules recovered all costs from capacity and excess energy, the interim rate schedules are necessary to recover costs under the interim operating plan.

The interim rate schedules superceded rate schedules approved on a final basis by the Commission on August 2, 2004 (108 FERC ¶62,113). These rates were approved for a period from October 1, 2003 to September 30, 2008. The interim rate schedules were approved by the Administrator on a final basis, under his authority to develop and place into effect rates for short-term sales of capacity, energy, or transmission service.

The existing interim rate schedules are based on a repayment study submitted to the Deputy Secretary on March 28, 2006. An updated study submitted to the Deputy Secretary on September 10, 2007, demonstrates that rates are adequate to meet repayment criteria as required by existing law and DOE Order RA 6120.2. Southeastern is proposing to extend the existing interim rate schedules for the period from February 25, 2008 to September 30, 2008.

The referenced repayment studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia 30635–6711. Interim Rate Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F are also available.

Dated: October 15, 2007.

Jon C. Worthington,

Administrator.

[FR Doc. E7–20950 Filed 10–23–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2007–0316; FRL–8487–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Episodic Releases of Oil and Hazardous Substances (Renewal); EPA ICR No. 1049.11, OMB Control No. 2050–0046

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 23, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2007–0316, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket [2822T], 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn M. Beasley, Regulation and Policy Development Division, Office of Emergency Management (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1965; fax number: (202) 564–2625; e-mail address: *Beasley.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 15, 2007 (72 FR 27306), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2007–0316, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Notification of Episodic Releases of Oil and Hazardous Substances (Renewal).

ICR numbers: EPA ICR No. 1049.11, OMB Control No. 2050–0046.

ICR Status: This ICR is scheduled to expire on October 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in

the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ) limit. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 311 of the Clean Water Act (CWA), as amended, requires the person in charge of a vessel to immediately notify the NRC of an oil spill into U.S. navigable waters if the spill causes a sheen, violates applicable water quality standards, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. Likewise, the reporting of oil spills allows the Federal government to determine whether cleaning up the oil spill is necessary to mitigate or prevent damage to public health or welfare or the environment.

The hazardous substance and oil release information collected under CERCLA section 103(a) and CWA section 311 also is available to EPA program offices and other Federal agencies that use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Emergency Response Notification System (ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and the regulated community use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. ERNS fact sheets, which provide summary and statistical information about hazardous substance and oil release notifications, also are available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are facilities or vessels that manufacture, process, transport, or otherwise use certain specified hazardous substances and oil.

Estimated Number of Respondents: 25,861.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 106,030 hours.

Estimated Total Annual Cost: $3,161,016 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 7,294 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to EPA's updating of burden estimates for this collection based upon historical information on the number of responses made during the previous three year period. Based upon revised estimates, the number of responses increased from an estimated three year average of 24,082 to 25,861.

Dated: October 18, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–20934 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–AO–2007–0408, FRL–8486–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulatory Pilot Projects (Renewal); EPA ICR No. 1755.08; OMB Control No. 2010–0026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 23, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–AO–2007–0408 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OA Docket, EPA Docket Center, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gerald Filbin, Office of Policy, Economics, and Innovation, (1807T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2182; fax number: 202–566–2220; e-mail address: *filbin.gerald@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12.

On June 15, 2007 (72 FR 33218), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–AO–2007–0408, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of the Administrator Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of the Administrator Docket is 202–566–0219.

Use EPA's electronic docket and comment system at *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Regulatory Pilot Projects (Renewal).

ICR numbers: EPA ICR No. 1755.08, OMB Control No. 2010–0026.

ICR Status: This ICR is scheduled to expire on October 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This is an information collection request renewal that will allow for the continued solicitation of proposals for innovative pilot projects and to allow EPA to continue its commitments to monitor the results of previous and ongoing pilot tests of regulatory innovation. The renewal of this ICR is important as it will allow the Agency to measure performance outcomes of regulatory innovation piloting and to assess the broader applicability of those pilot projects. The ICR is also necessary to allow EPA to identify State and Tribal co-regulators as well as additional regulated entities who are interested in partnering with EPA in innovative pilot projects, allowing the Agency to continue its commitment to innovation and regulatory flexibility with facilities, communities, and states in achieving environmental results. The renewal of this ICR will allow EPA to continue to receive and work with project sponsors on proposals for innovation. Responses related to Project XL are voluntary, as are any responses by state environmental agencies to EPA's request for input for the design of the annual competition. States seeking funding for an environmental regulatory innovation project must submit a project proposal in the annual competition (see *http://www.epa.gov/innovation/stategrants*) to receive a grant award and submittal of a proposal does not automatically guarantee an assistance agreement between EPA and a state for the purpose of implementing an innovation project. In requiring the submittal of a proposal in competition, EPA is adhering to its own policies on competition (EPA 5700.7) and performance measurement (EPA 5700.8). Similarly, states implementing innovative regulatory pilot tests in projects funded by a State Innovation Grant are required to report on progress during the operation of a project and to provide a final project report summarizing outcomes and major findings of each project. EPA's policy on performance measurement in assistance agreements is an implementation outcome under the Government Performance and Results Act (GPRA sections 1115(a)(4) and 1116(c)). EPA's innovation piloting efforts are multi-media in nature and include programs authorized under the full range of authorizing legislation (e.g., the Clean Air Act, section 103(b)(3) (42 U.S.C. 7403(b)(3)) the Clean Water Act, section 104(b)(3) (33 U.S.C. 1254(b)(3)); the Solid Waste Disposal Act, section 8001 (42 U.S.C. 6981); the Toxics Substances Control Act, section 10 (15 U.S.C. 2609); the Federal Insecticide, Fungicide, and Rodenticide Act, section 20 (7 U.S.C. 136r); and the Safe Drinking Water Act, sections 1442 (a) and (c) (42 U.S.C. 1(a) and (c)).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and regulated entities participating in EPA regulatory pilot projects.

Estimated Number of Respondents: 1252.

Frequency of Response: Occasionally, quarterly, and/or annually.

Estimated Total Annual Hour Burden: 7748 hours.

Estimated Total Annual Cost: $331,460. This includes an estimated labor cost of $331,460 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Changes in the Estimates: There is an increase of 6,860 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects the need to collect information on project performance and outcomes in the form of quarterly reporting and final project reporting for current and future projects that is not addressed in previous ICRs.

Dated: October 17, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–20937 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0046; FRL–8486–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (Renewal); EPA ICR Number 1564.07, OMB Control Number 2060–0202

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before November 23, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0046, to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 9, 2007 (72 *FR* 10735), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2007–0046, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (Renewal).

ICR Numbers: EPA ICR Number 1564.07, OMB Control Number 2060–0202.

ICR Status: This ICR is scheduled to expire on November 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for small industrial-commercial-institutional steam generating units, published at 40 CFR part 60, subpart Dc, were proposed on June 9, 1989, and promulgated on September 12, 1990. These standards apply to industrial-commercial-institutional steam generating units with maximum design heat input capacity of 29 megawatts (MW) (100 million Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr), commencing construction, modification, or reconstruction after June 9, 1989. The standards limit the emissions of sulfur dioxide (SO_2) and particulate matter (PM). For the purposes of this document, new units are those affected units that have had construction, modification, or reconstruction within the last three years. This information is being collected to assure compliance with 40 CFR part 60, subpart Dc.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart Dc, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 293 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Small industrial-commercial-institutional steam generating units.

Estimated Number of Respondents: 235.

Frequency of Response: Initially, on occasion, and semiannually.

Estimated Total Annual Hour Burden: 159,972.

Estimated Total Annual Cost: $19,653,054 which includes $1,491,005 annualized Capital Startup cost, $7,955,140 annualized Operating and Maintenance (O&M) cost and $10,206,909 annual Labor Costs.

Changes in the Estimates: There is no significant change in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent.

There is, however, an adjustment in the labor hour estimate. The previous ICR shows a total of 156,610 annual hours. This renewal ICR shows a total of 159,972 annual hours. The small labor hour increase of 3,362 was caused by a mathematical error in the previous ICR.

There is also a small change in the cost estimate. The previous ICR used a cost figure that was rounded-up ($9,446,000). This ICR uses the exact cost figure of ($9,446,145) resulting in a small cost increase of $145.

Dated: October 18, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–20938 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0403; FRL–8486–1]

Human Studies Review Board (HSRB); Notification of a Public Teleconference To Review Its Draft Report From the June 27–29, 2007 HSRB Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Human Studies Review Board (HSRB) announces a public teleconference meeting to discuss its draft report from the June 27–29, 2007 HSRB meeting.

DATES: The teleconference will be held on November 13, 2007, from 1 to approximately 3 p.m. Eastern Time.

Location: The meeting will take place via telephone only.

Meeting Access: For information on access or services for individuals with disabilities, please contact the Designated Federal Officer (DFO) at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the telephone conference, request a current draft copy of the Board's report or who wish further information may contact Crystal Rodgers-Jenkins, EPA, Office of the Science Advisor, (8105), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail at (202) 564–5275. General information concerning the HSRB can be found on the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/*.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2007–0403, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ord.docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Special arrangements should be made for deliveries of boxed information. Please contact (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for special instructions.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD–2007–0403. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

I. Public Meeting

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA, or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and

Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please contact (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to the Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

The June 27–29, 2007 draft HSRB meeting draft report is now available. You may obtain electronic copies of this document, and certain other related documents that might be available electronically at *www.regulations.gov* and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/*. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2007–0403 in the subject line on the first page of your request.

1. *Oral comments*. Requests to present oral comments will be accepted up to November 6, 2007. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, November 6, 2007, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB DFO to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are limited to 5 minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments.

2. *Written comments*. Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least 5 business days prior to the beginning of this teleconference. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, November 6, 2007. You should submit your comments using the instructions in Unit 1.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The EPA Human Studies Review Board will be reviewing its draft report from the June 27–29, 2007 HSRB meeting. Background on the June 27–29, 2007 HSRB meeting can be found at 72 FR 31323 (June 6, 2007) and at the EPA HSRB Web site *http://www.epa.gov/osa/hsrb/*. The Board may also discuss planning for future HSRB meetings.

Dated: October 18, 2007.

Elizabeth Lee Hofmann,

Deputy Director, Office of the Science Advisor.

[FR Doc. E7–20953 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0944; FRL–8148–8]

Dichlorprop-p Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide dichlorprop-p (2,4-DP-p). The Agency's risk assessments and other related documents also are available in the 2,4-DP-p Docket. 2,4-DP-p is an herbicide used to manage broadleaf weeds, woody plants, and brush in residential lawns, sod farms, golf courses, sports turf, and non-cultivated agricultural land. 2,4-DP-p is also used to manage woody plants and brush in non-cultivated areas, such as fencerows and rights-of-ways. EPA has reviewed 2,4-DP-p through the public participation process that the Agency

uses to involve the public in developing pesticide reregistration decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0037; fax number: (703) 308–8005; e-mail address: *louie.rosanna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0944 publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, 2,4-DP-p under section 4(g)(2)(A) of FIFRA. 2,4-DP-p is a chlorophenoxy herbicide frequently co-formulated with other chlorophenoxy herbicides. Products containing 2,4-DP-p are frequently formulated into weed-and-feed and spot-treatment products used to manage broadleaf weeds in residential lawns, sod farms, golf courses, and non-cultivated agricultural land. 2,4-DP-p is also used to manage woody plants and brush in non-cultivated areas, such as fencerows and rights-of-ways. EPA has determined that the data base to support reregistration is substantially complete and that products containing 2,4-DP-p are eligible for reregistration, provided that the mitigation measures are adopted in the manner described in the RED, including, but not limited to, use rate reductions and labeling amendments. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing 2,4-DP-p.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, 2,4-DP-p was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for 2,4-DP-p.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Through consultations with stakeholders, all issues related to this pesticide were resolved through the various mitigation measures identified in the RED. Therefore, the Agency is issuing the 2,4-DP-p RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 10, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–20818 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0943; FRL–8148–7]

Mecoprop-p Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide mecoprop-p (MCPP-p). The Agency's risk assessments and other related documents also are available in the MCPP-p Docket. MCPP-p is an herbicide used to manage broadleaf weeds in residential lawns, sod farms, golf courses, and non-cultivated agricultural land. EPA has reviewed MCPP-p through the public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0037; fax number: (703) 308–8005; e-mail address: *louie.rosanna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0943 publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, MCPP-p under section 4(g)(2)(A) of FIFRA. MCPP-p is a chlorophenoxy herbicide frequently co-formulated with other chlorophenoxy herbicides. Products containing MCPP-p are frequently formulated into weed-and-feed and spot-treatment products used to manage broadleaf weeds in residential lawns, sod farms, golf courses, and non-cultivated agricultural land. EPA has determined that the data base to support reregistration is substantially complete and that products containing MCPP-p are eligible for reregistration, provided that the mitigation measures are adopted in the manner described in the RED, including, but not limited to, use rate reductions and labeling amendments. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing MCPP-p.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, MCPP-p was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for MCPP-p.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Through consultations with stakeholders, all issues related to this pesticide were resolved through the various mitigation measures identified in the RED. Therefore, the Agency is issuing the MCPP-p RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 10, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–20824 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0975; FRL–8153–3]

Notice of Receipt of Requests for Amendments to Delete the Grape Use in Methomyl Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective April 21, 2008, unless the Agency receives a written withdrawal request on or before April 21, 2008. The Agency will consider a withdrawal request postmarked no later than April 21, 2008.

Users of these products who desire continued use on crops or sites being deleted should contact the registrant on or before April 21, 2008.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2007–0975, by one of the following methods:

•*Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Dana L. Friedman, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8827; e-mail address: *friedman.dana@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2007–0975. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
352-384	DuPont Lannate® LV Insecticide	Methomyl	Grapes
352-342	DuPont Lannate® SP Insecticide	Methomyl	Grapes

Users of these products who desire continued use on the crop being deleted should contact the registrant before April 21, 2008 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with the registrant prior to the Agency's approval of the deletion.

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit, by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES

EPA Company Number	Company Name and Address
352	E.I. du Pont de Nemours and Company DuPont Crop Protection Stine-Haskell Research Center P.O. Box 30 Newark, DE 19714-0300

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Dana L. Friedman using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than April 21, 2008.

V. Provisions for Disposition of Existing Stocks

The Agency has not yet determined what action to take with respect to existing stocks of product if the proposed use deletion is approved. The Agency is planning to evaluate any data and mitigation options during the comment period to determine if there are alternatives that can be proposed to meet the Agency's dietary risk criteria.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 17, 2007.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–20825 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0996; FRL–8152–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before November 23, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0996, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's

normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0996. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Driss Benmhend, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend.driss@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

File Symbol: 84185-G. *Applicant*: Plasma Power of India, c/o OMC Ag Consulting, 828 Tanglewood Lane, East Lansing, MI 48823. *Product name*: Plasma Neem Oil™ Manufacturing Use Product. *Insecticide Active ingredient*: Neem Oil at 100%. *Proposal classification/Use*: Agricultural Food Use. (Driss Benmhend).

File Symbol: 84185-U. *Applicant*: Plasma Power of India, c/o OMC Ag Consulting, 828 Tanglewood Lane, East Lansing, MI 48823. *Product name*: Plasma Neem Oil™ Biological Insecticide. *Insecticide Active ingredient*: Neem Oil at 100%. *Proposal classification/Use*: Agricultural Food Use. (Driss Benmhend).

File Symbol: 83945-R. *Applicant*: Coeur D'Alene Fiber Fuels Inc., c/o Steptoe and Johnson, LLP, 1330 Connecticut Ave. NW., Washington, DC 20036. *Product name*: Atlas Pond Renue. *Algaecide Active ingredient*:

Sodium Perborate Tetrahydrate at 59.8%. *Proposal classification/Use*: None. (Driss Benmhend).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 11, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–20965 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0936; FRL–8154–1]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 23, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 6F7135	EPA–HQ–OPP–2007–0495
PP 0F6201	EPA–HQ–OPP–2007–0495
PP 7F7211	EPA–HQ–OPP–2007–0507
PP 7F7223	EPA–HQ–OPP–2007–0507

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Tolerance

1. *PP 6F7135*. (EPA–HQ–OPP–2007–0495). Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268, proposes to establish a tolerance for residues of the insecticide methoxyfenozide, Intrepid 2F in or on food commodities animal feed, non-grass, group 18, forage at 35 parts per million (ppm); animal feed, non-grass, group 18, hay at 85 ppm; poultry-liver at 0.2 ppm; and eggs at 0.04 ppm. Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities. The available Analytical Enforcement Methodology was previously reviewed in the **Federal Register** of September 20, 2002 (67 FR 59193). Contact: Mark Suarez, (703) 305–0120, e-mail address: *suarez.mark@epa.gov*.

Amendment to Existing Tolerance

1. *PP 0F6201*. (EPA–HQ–OPP–2007–0495). Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268, proposes to amend the tolerances in 40 CFR 180.544 to reestablish the time-limited tolerances for indirect or inadvertent residues of insecticide methoxyfenozide and its metabolites RH-117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N'-(3-hydroxy-2-methylbenzoyl) hydrazide, RH-151,055 glucose conjugate of RH-117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N-[3(β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH-152,072 the malonylglycosyl conjugate of RH-117,236 in or on the food commodities vegetable, root and tuber, group 1 at 0.1 parts per million (ppm); vegetable, leaves of root and tuber, group 2 at 0.2 ppm; vegetable, bulb, group 3 at 0.2 ppm; vegetable, legume, group 6 at 0.1 ppm; vegetable, foliage of legume, group 7 at 10 ppm; grain, cereal, forage, fodder, and straw, group 16 at 10 ppm; grass, forage, fodder and hay, group 17 at 10 ppm; animal feed, non-grass, group 18 at 10 ppm; and herb and spice, group 19 at 10 ppm. Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities, based on the Rohm and Haas Company Technical Report No. 34–98–87, ''Tolerance Enforcement Method for Parent RH-2485 in Pome Fruit.'' The available Analytical Enforcement Methodology was previously reviewed in the **Federal Register** of September 20, 2002 (67 FR 59193).

Rohm and Haas Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. A Notice of Filing was submitted and published in the **Federal Register** of March 19, 2001 (66 FR 15443) (FRL–6766–7). Based on the data submitted by Rohm and Haas Company, the Agency determined that only time-limited tolerances for these residues could be established. The final rule was published on September 20, 2002 (67 FR 59193) (FRL–7198–5) with time-limited tolerances expiring on September 30, 2007. To enable establishment of permanent tolerances, 24 additional rotational crop trials were requested. The data were submitted to the Agency on March 3 and June 17, 2003. An extension of the tolerances which expired September 30, 2007 is needed to allow for Agency review of the additional rotational crop data. Contact: Mark Suarez, (703) 305–0120, e-mail address: *suarez.mark@epa.gov*.

2. *PPs 7F7211* and *7F7223*. (EPA–HQ–OPP–2007–0507). Gowan Company, 370 South Main Street, Yuma, AZ 85364, proposes to amend the tolerances in 40 CFR 180.448 for residues of the miticide hexythiazox (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on the processed food commodities citrus dried pulp from 1.5 ppm to 0.6 ppm; and citrus oil from 0.9 ppm to 26 ppm (*PP 7F7223*). Gowan Company also proposes to amend the existing tolerances in or on the food commodities pome fruit, crop group 11 from 1.7 ppm to 0.25 ppm; wet apple pomace from 2.5 ppm to 0.74 ppm; and the meat byproducts of cattle, goat, horse and sheep from 0.12 ppm to 0.02 ppm (*PP 7F7211*). A practical analytical method, high pressure liquid chromatography with an ultraviolet detector, which detects and measures residues of hexythiazox and its metabolites as a common moiety, is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. Contact: Olga Odiott, (703) 308–9369, e-mail address: *odiott.olga@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 16, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–20967 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006-0936; FRL–8150–8]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 23, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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iv. Describe any assumptions and provide any technical information and/or data that you used.

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 7E7228	EPA–HQ–OPP–2007–0627
PP 7E7234	EPA–HQ–OPP–2007–0940
PP 7E7238	EPA–HQ–OPP–2007–0189
PP 7E7253	EPA–HQ–OPP–2007–0910
PP 7E7255	EPA–HQ–OPP–2007–0300
PP 7E7257	EPA–HQ–OPP–2007–0945
PP 7E7234	EPA–HQ–OPP–2007–0940
PP 7E7245	EPA–HQ–OPP–2007–0906

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Tolerances

1. *PP 7E7228*. (EPA–HQ–OPP–2007–0627). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to establish a tolerance for residues of the plant growth regulator forchlorfenuron (KT–30) in or on food commodities bushberry subgroup 13B (aronia berry; blueberry, highbush; blueberry, lowbush; currant, buffalo; chilean guava; currant, black and currant, red; barberry, European, elderberry; gooseberry; cranberry, highbush; honeysuckle, edible; huckleberry; jostaberry; juneberry; currant; salal; and buckthorn, sea) at 0.01 parts per million (ppm). Two analytical methods, both based on high performance liquid chromatography (HPLC) procedures have been developed. The first method used a visible ultraviolet (UV) detector, while the second method used a mass spectrophotometer (MS) detector. Since the MS detector is capable of both qualitative as well as quantitative measurement, it is the preferred method. The lowest level of quantification (LOQ) in blueberries was 0.01 ppm. Contact: Shaja R. Brothers, telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

2. *PP 7E7234*. (EPA–HQ–OPP–2007–0940). Interregional Research Project Number 4 (IR– 4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to establish a tolerance for residues of the fungicide fludioxonil 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile in or on food commodities tomato at 0.4 ppm; tomatillo at 0.4 ppm; tomato, paste at 1.0 ppm; avocado at 0.45 ppm; black sapote at 0.45 ppm; canistel at 0.45 ppm; mamey sapote at 0.45 ppm; mango at 0.45 ppm; papaya at 0.45 ppm; sapodilla at 0.45 ppm; star apple at 0.45 ppm; herb, subgroup 19A, fresh at 13 ppm; herb, subgroup 19A, dried at 55 ppm; leaves of root and tuber vegetables at 40 ppm; root vegetables, except sugar beet subgroup at 0.5 ppm; lemon at 0.25 ppm; lime at 0.25 ppm; cucurbits at 0.6 ppm; and tuberous and corm vegetables, except potato subgroup at 4.0 ppm. Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG–597B) has passed an Agency petition method validation for several commodities, and is currently the enforcement method for fludioxonil. This method has also been forwarded to the Food and Drug Administration for inclusion into PAM II. An extensive database of method validation data using this method on various crop commodities is available. Contact: Sidney Jackson, telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

3. *PP 7E7238*. (EPA–HQ–OPP–2007–0189). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to establish a tolerance for the combined residues of the herbicide propyzamide (pronamide) and its metabolite containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl) benzamide in or on food commodities bearberry at 1.0 ppm; bilberry at 1.0 ppm; blueberry, lowbush at 1.0 ppm; cloudberry at 1.0 ppm; cranberry at 1.0 ppm; lingonberry at 1.0 ppm; muntries at 1.0 ppm; and partridgeberry at 1.0 ppm. Adequate enforcement methodology (gas chromatography using electron capture detection) is available to enforce the tolerance expression, this method is published in PAM II, as method I. Contact: Sidney Jackson, telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

4. *PP 7E7253*. (EPA–HQ–OPP–2007–0910). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to establish a tolerance for residues of the insecticide buprofezin in or on food commodities vegetable, fruiting, group 8; and okra at 1.8 ppm. The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography using nitrogen phosphorous detection. Contact: Susan Stanton, telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

5. *PP 7E7255*. (EPA–HQ–OPP–2007–0300). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to establish a tolerance for residues of the insecticide Z-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±) cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers in or on food commodities borage, seed at 0.2 ppm; castor oil plant, seed at 0.2 ppm; Chinese tallowtree, seed at 0.2 ppm; crambe, seed at 0.2 ppm; cuphea, seed at 0.2 ppm; echium, seed at 0.2 ppm; euphorbia, seed at 0.2 ppm; evening primrose, seed at 0.2 ppm; flax, seed at 0.2 ppm; gold of pleasure, seed at 0.2 ppm; hare's ear mustard, seed at 0.2 ppm; jojoba, seed at 0.2 ppm; lesquerella, seed at 0.2 ppm; lunara, seed at 0.2 ppm; meadowfoam, seed at 0.2 ppm; milkweed, seed at 0.2 ppm; mustard, seed at 0.2 ppm; niger seed, seed at 0.2 ppm; oil radish, seed at 0.2 ppm; poppy, seed at 0.2 ppm; rose hip, seed at 0.2 ppm; sesame, seed at 0.2 ppm; stokes aster, seed at 0.2 ppm; sweet rocket, seed at 0.2 ppm; tallowwood, seed at 0.2 ppm; tea oil plant, seed at 0.2 ppm; and vernonia, seed at 0.2 ppm. There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (gas chromatography with electron capture detection (GC/ECD)). Contact: Sidney Jackson, telephone

number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

6. *PP 7E7257*. (EPA–HQ–OPP–2007–0945). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to establish a tolerance for residues of the herbicide MCPB [4-(2-methyl-4-chlorophenoxy) butyric acid] in or on food commodity mint tops (leaves and stems) at 0.25 ppm. MCPB and MCPA residues were analyzed using a gas chromatographic/mass spectrometric (GC/MS) method. For MCPB in or on mint tops, the LOD for the method was calculated to be 0.004 ppm and the LOQ was calculated to be 0.012 ppm. For MCPA in or on mint tops, the LOD for the method was calculated to be 0.003 ppm and the LOQ was calculated to be 0.009 ppm. The lowest level of method validation (LL/MV) for both MCPB and MCPA in or on mint tops was 0.05 ppm. For MCPB in or on mint oil, the LOD for the method was calculated to be 0.015 ppm and the LOQ was calculated to be 0.044 ppm; and for MCPA in or on mint oil, the LOD for the method was calculated to be 0.013 ppm and the LOQ was calculated to be 0.039 ppm. The lowest level of method validation for both MCPB and MCPA in or on mint oil was 0.05 ppm. Contact: Susan Stanton, telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

Amendment to Existing Tolerances

1. *PP 7E7234*. (EPA–HQ–OPP–2007–0940). Upon approval of the aforementioned new tolerances above in No. 2, the Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to amend the tolerances in 40 CFR 180.516 by removing the established tolerances for residues of the fungicide fludioxonil 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile in or on the food commodities herb, subgroup 19A, fresh at 10 ppm; herb, subgroup 19A, dried at 65 ppm; carrot at 0.75 ppm; and turnip, greens at 10 ppm. Contact: Sidney Jackson, telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

2. *PP 7E7245*. (EPA–HQ–OPP–2007–0906). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes to amend 40 CFR 180.582 to increase the tolerance for the combined residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy] methyl]phenyl]methoxy-, methyl ester and its metabolite methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl]carbamate (BF-500-3), expressed as parent compound in or on the food commodities barley, grain at 1.3 ppm and barley, straw at 9.0 ppm. In plants, the method of analysis is aqueous organic solvent extraction, column clean-up and quantitation by liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS). In animals, the method of analysis involves base hydrolysis, organic extraction, column clean-up and quantitation by LC/MS/MS or derivatization (methylation) followed by quantitation by gas chromatography/mass spectrometry (GC/MS). Contact: Shaja R. Brothers, telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 10, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–20599 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0950; FRL–8150–9]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 352–EUP–RTE from E. I. du Pont de Nemours and Company requesting an experimental use permit (EUP) for the termiticide DuPont E2Y45 200SC containing the active ingredient chlorantraniliprole. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before November 23, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0950, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0950. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kable Davis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0415; e-mail address: *davis.kable@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

E. I. du Pont de Nemours and Company, DuPont Crop Protection, P. O. Box 30, Newark, DE 19714–0030, has submitted an EUP application for 352–EUP–RTE for the termiticide E2Y45 200SC containing the active ingredient chlorantraniliprole, to test on/around 110 residential structures infested with subterranean and drywood termite species. Proposed shipment/use dates are November 1, 2007 through November 30, 2009. The total quantity of product proposed for shipment/use is 125 liters of formulated product (55 pounds (25 kilograms) active ingredient). The states involved include: Alabama, Arizona, California, Florida, Louisiana, Missouri, Nebraska, North Carolina, Texas, and Virginia.

III. What Action is the Agency Taking?

Following the review of the E. I. du Pont de Nemours and Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 5, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–20598 Filed 10–23–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Reestablishment of FASAB Charter

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of OMB, the Director of CBO, and the Comptroller General (the Sponsors) have established and agreed to continue an advisory committee to consider and recommend accounting standards and principles for the federal government.

For Further Information, or To Obtain a Copy of the Charter, Contact: Wendy M. Payne, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. 31 U.S.C. 3511(D), Pub. L. 92–463.

Dated: October 19, 2007.

Wendy M. Payne,

Executive Director.

[FR Doc. 07–5251 Filed 10–23–07; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Emergency Review and Approval

October 19, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 23, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or via fax at 202–395–5167, and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* or by U.S. mail to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call (202) 418–0217. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to *http://www.reginfo.gov/public/do/PRAMain* (an OMB/GSA web page), (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number) and then click on the ICR Reference Number to view detailed information about this ICR.

SUPPLEMENTARY INFORMATION: The Commission has requested approval of these information collection requirements under the emergency processing provisions of the PRA by December 7, 2007.

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,017 respondents.

Estimated Time per Response: 58.29 hours.

Frequency of Response: On occasion, annual, and one time reporting requirements; Recordkeeping; and Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 350,704 hours.

Total Annual Cost: $3,000,000.

Privacy Act Impact Assessment: The information collection requirements do not have a direct impact on individuals or households, and thus there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: To the extent that the customer proprietary network information includes proprietary information, respondents are required to take adequate measures to protect this confidentiality.

Needs and Uses: On January 12, 2007, President George W. Bush signed into law the ''Telephone Records and Privacy Protection Act of 2006,'' which responded to the problem of ''pretexting,'' or seeking to obtain unauthorized access to telephone records, by making it a criminal offense subject to fines and imprisonment. In particular, pretexting is the practice of pretending to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records. The Telephone Records and Privacy Protection Act of 2006 Act found that such unauthorized disclosure of telephone records is a problem that ''not only assaults individual privacy but, in some instances, may further acts of domestic violence or stalking, compromise the personal safety of law enforcement officers, their families, victims of crime, witnesses, or confidential informants, and undermine the integrity of law enforcement investigations.''

On April 2, 2007, the Commission released the *Report and Order and Further Notice of Proposed Rulemaking*, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP–Enabled Services, CC Docket No. 96–115, WC Docket No. 04–36, FCC 07–22, which responded to the practice of pretexting by strengthening its rules to protect the privacy of customer proprietary network information (CPNI) that is collected and held by providers of communications services. Section 222 of the Communications Act requires telecommunications carriers to take specific steps to ensure that CPNI is adequately protected from unauthorized disclosure. Pursuant to section 222, the Commission adopted new rules focused on the efforts of providers of communications services to prevent pretexting. These rules require providers of communications services to adopt additional privacy safeguards that, the Commission believes, will sharply limit pretexters' ability to obtain unauthorized access to the type of personal customer information from carriers that the Commission regulates. In addition, in furtherance of the Telephone Records and Privacy Protection Act of 2006, the Commission's rules help ensure that law enforcement will have necessary tools to investigate and enforce prohibitions on illegal access to customer records.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–20936 Filed 10–23–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011392–004.

Title: NYKCool/Kyokuyo Discussion Agreement.

Parties: NYKCool AB and Kyokuyo Shipping Co. Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of NYKLauritzenCool AB to NYKCool AB.

Agreement No.: 011665–009.

Title: Specialized Reefer Shipping Association Agreement.

Parties: NYKLauritzenCool AB and Seatrade Group N.V.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of NYKLauritzenCool AB to NYKCool AB.

Agreement No.: 011870–008.

Title: Indian Subcontinent Discussion Agreement.

Parties: Emirates Shipping Line FZE; Shipping Corporation of India; and Zim Integrated Shipping Services, Ltd.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes United Arab Shipping Company (S.A.G.) as party to the agreement.

Agreement No.: 012008–001.

Title: The 360 Quality Association Agreement.

Parties: NYKLauritzenCool AB and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of NYKLauritzenCool AB to NYKCool AB.

By order of the Federal Maritime Commission.

Dated: October 19, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–20949 Filed 10–23–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission,Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Roy's Shipping Inc dba Quikship Caribbean Services, 2153 West Colonial Drive, Orlando, FL 32804. Officer: Roy Rattray, President (Qualifying Individual).

IMA Limited dba Miracle Brokers/BWIE, 207 Sparky Drive, Cayman Islands. Officer: Irma Chirino, Managing Director (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Hyde Ocean Services, Inc., 9595 Valparaiso Court, Indianapolis, IN 46268. Officer: John Richard Hyde, President (Qualifying Individual).

U.S. Xpress, Inc. dba Xpress Network Solutions, a Division of U.S. Xpress, Inc., 4080 Jenkins Road, Chattanooga, TN 37421. Officers: Cory Bonner, Vice President (Qualifying Individual), Max L. Fuller, President.

CY Shipping and Cargo Transfer, 22 A Mars Hill, Frederiksted, VI 00841, Cyprian Theodore, Sole Proprietor.

GLS Logistics Inc., 147–20 181st Street, Jamaica, NY 11434. Officer: Richard Hao, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

O.N.S. International Forwarding Inc., 6326 Leslie Street, Jupiter, FL 33458. Officers: Henry A. Stein, President (Qualifying Individual), Joanna Stein, Secretary.

Dated: October 19, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–20946 Filed 10–23–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, October 29, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 19, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–5271 Filed 10–22–07; 9:23 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—10/01/2007			
20072121	Fjarfestingafelagid Gaumur ehf	Saks Inc	Saks Inc.
20072158	Applera Corporation	Berkeley Heartlab, Inc	Berkeley Heartlab, Inc.
20072164	Johnson & Johnson	Isis Pharmaceuticals, Inc	Isis Pharmaceuticals, Inc.
20072203	Paramount Acquisition Corp	Mr. Jerry Silva	B.J.K. Inc.
20072206	Genstar Capital Partners V, L.P	PRA International	PRA International.
20072207	Targa Resources Partners LP	Targa Resources Investments Inc	Targa Louisiana Field Services LLC; Targa Resources Texas GP LLC; Targa Texas Field Services LP.
TRANSACTIONS GRANTED EARLY TERMINATION—10/02/2007			
20072138	Alpharma Inc	IDEA AG	IDEA AG.
20072154	Bayer AG	Mission Pharmacal Company	Mission Pharmacal Company.
20072159	Yahoo! Inc	BlueLithium, Inc	BlueLithium, Inc.
20072180	International Business Machines Corporation.	Telelogic AB	Telelogic AB.
20072211	Blue Cross Blue Shield of Michigan	Trident III, L.P	CWI Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/03/2007			
20072139	JSW Steel Limited	Mr. P.R. Jindal	Jindal Pipes USA, Inc.; U.S. Denro Steels, Inc.
20072140	JSW Steel Limited	Jindal Saw Limited	Jindal Enterprises, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—10/04/2007			
20072149	2003 TIL Settlement	Deloitte and Touche USA LLP	Deloitte Tax LLP.
20072192	Mr. Summer M. Redstone	GGC Investment Fund II, L.P	SignStorey, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/05/2007			
20072162	Abrams Auto Holdings, LLC	Clair International, Inc	Clair International of Westwood, Inc.
20072213	HD Partners Acquisition Corporation	National Hot Rod Association	National Hot Rod Association.
20072219	Humana Inc	KMG America Corporation	KMG America Corporation.
20072222	Summit Partners Private Equity Fund VII–A, L.P.	Touro College	Touro University.
20072223	Hilb Rogal & Hobbs Company	Bank of America Corporation	Bank of America Corporate Insurance Agency, LLC; Philadelphia Benefits, LLC.
20072227	NetScout Systems, Inc	Network General Central Corporation	Network General Corporation.
20072232	Parthenon Investors III, L.P	ASG Holdings LLC	ASG Holdings LLC.
20072233	Orica Limited	Mining Systems Holding LLC	Mining Systems Holding LLC.
20072239	Sevin Rosen Fund IX L.P	Citrix Systems, Inc	Citrix Systems, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/09/2007			
20072197	Allergan, Inc	Esprit Pharma Holding Company, Inc	Esprit Pharma Holding Company, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/10/2007			
20072175	Icahn Partners Master Fund LP	BEA Systems, Inc	BEA Systems, Inc.
20072176	Carl C. Icahn	BEA Systems, Inc	BEA Systems, Inc.
20072177	Icahn Partners Master Fund II L.P	BEA Systems, Inc	BEA Systems, Inc.
20072178	Icahn Partners LP	BEA Systems, Inc	BEA Systems, Inc.
20072210	Hewlett-Packard Company	Court Square Capital Partners II, L.P	MacDermid Colorspan, Inc.
20072217	Varel Acquisition Holding, Inc	KRG Capital Fund II, L.P	Varel Holdings, Inc.
20072231	OZ Master Fund, Ltd	Smart Balance, Inc	Smart Balance, Inc.
20072241	USPF III Leveraged Feeder, L.P	The Goldman Sachs Group, Inc	Calypso Energy Holdings LLC.
20072244	AT&T Inc	James and Jean Douglas, Jr	Easterbrooke Cellular Corporation.
20072251	Extendicare Real Estate Investment Trust.	Dr. Louis B. Lukenda	Tendercare (Michigan) Inc.; Tendercare Nursing Homes (Indiana) Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/11/2007			
20072169	Bristol-Myers Squibb Company	Adnexus Therapeutics, Inc	Adnexus Therapeutics, Inc.
20072200	Harbinger Capital Partners Offshore Fund I, Ltd.	HP V AIV–1, L.P	Hourglass Holdings, LLC.
20080002	Molina Healthcare, Inc	Sisters of Mercy Health System	Alliance for Community Health, L.L.C.

Transaction No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—10/12/2007			
20070333	UPMC d/b/a University of Pittsburgh Medical Center.	Catholic Health East	Emergency Medicine Association; Mercy Neurosurgery Group; Mercy Physicians Group; Mercy Primary Care, Inc.; The Mercy Hospital of Pittsburgh.
20072220	Provident Energy Trust	Quicksilver Resources Inc	Beaver Creek Pipeline, L.L.C.; GTG Pipeline Corporation; Mercury Michigan, Inc.; Terra Energy Ltd.
20072230	Charles W. Ergen	Sling Media, Inc	Sling Media, Inc.
20072237	Key Energy Services, Inc	L. Charles Moncla, Jr	LCM Industries, LLC; Moncla Well Service, Inc.
20072252	Quadrangle Capital Partners II LP	NTELOS Holdings Corp	NTELOS Holdings Corp.
20080006	Rothschild Concordia SAS	Paris-Orleans S.A	Paris-Orleans S.A.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07–5244 Filed 10–23–07; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12½ percent for the quarter ended September 30, 2007. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 17, 2007.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. 07–5233 Filed 10–23–07; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 17th meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: November 13, 2007, from 10:30 a.m. to 3:30 p.m. (Central Time).

ADDRESSES: Sheraton Chicago Hotel & Towers, 301 East North Water Street, Chicago, IL 60611, Conference Room TBD.

FOR FURTHER INFORMATION CONTACT: Visit *http://www.hhs.gov/healthit/ahic/html.*

SUPPLEMENTARY INFORMATION: The meeting will include a presentation on the Nationwide Health Information Network (NHIN) Trial Implementations; a report on the Health Information Technology Physician Adoption Survey; a presentation from the National Committee on Vital and Health Statistics on Secondary Uses; and a report from the AHIC Standing Committee of the Whole on the AHIC Successor.

A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–5232 Filed 10–23–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the fourteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Monday, November 19, 2007 and 8:30 a.m. to approximately 5:30 p.m. on Tuesday, November 20, 2007, at the Ronald Reagan Building and International Trade Center—1300 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The agenda will focus on three key issues—finalization of the SACGHS report on the opportunities and challenges in realizing the promise of pharmacogenomics; the oversight of genetic testing; and the preparedness of health professionals to incorporate genetic and genomic tests and services into clinical and public health practice. With regard to the oversight of genetic resting, SACGHS' draft report to the

Secretary of Health and Human Services will be released for public comment in early November. The Committee will provide an extended period of time during the November meeting for members of the public to provide their perspectives on the oversight issues and comments on the Committee's draft report and recommendations. The Committee will also be briefed about an international analysis of oversight systems for genetic testing with a focus on the U.S. system.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*

Dated: October 17, 2007.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 07–5239 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007P–0047]

Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 14, 2007, from 8 a.m. to 5 p.m.

Addresses: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select ''2007P–0047—Amend the Dosage of Oral Phenylephrine Listed in the Final Monograph on Oral Decongestants,'' and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by close of business on December 30, 2007.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person; Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Diem.Ngo@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301) 443–0572 in the Washington, DC area), code 3014512541. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the safety and effectiveness of phenylephrine hydrochloride and phenylephrine bitartrate as over-the-counter (OTC) oral nasal decongestants. The discussion at the meeting will address a citizen petition submitted to FDA on February 1, 2007 (Docket No. 2007P–0047/CP1), which asserts that the available data do not support the adult and pediatric doses of phenylephrine hydrochloride and phenylephrine bitartrate that are generally recognized as safe and effective in the OTC drug monograph for Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (CCABADP) in 21 CFR part 341. The meeting will focus on the review of existing safety and efficacy data and the petitioner's request that the CCABADP monograph be amended to increase the adult dose of phenylephrine hydrochloride from 10 to 25 milligrams (mg) and that of phenylephrine bitartrate from 15.6 to 40 mg.

Additional information was submitted to the docket for OTC Nasal Decongestants (Docket No. 1976N–0052N; submissions EMC140, C251, C253 and Supplement 13) and is related to the petition or the petitioner's publications. These submissions were submitted to the OTC Nasal Decongestant docket and have been cross-referenced and linked to Docket No. 2007P–0047. The petition and other relevant submissions can be found at the following Web site: *http://www.fda.gov/ohrms/dockets/dockets/07p0047/07p0047.htm*.

Other information in Docket No. 1976N–0052N may be considered. For example, see comments 10 and 11 of the Tentative Final Monograph for OTC Nasal Decongestants, published in the **Federal Register** of January 15, 1985 (50 FR 2220 at 2226).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material will be available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 30, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 22, 2007. Time allotted for each presentation may be limited. If the number of registrants

requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 23, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 18, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. 07–5249 Filed 10–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Office of Health Information Technology, Health Center Controlled Networks Progress Reports—New

The Office of Health Information Technology (OHIT), Division of State and Community Assistance (DSCA), plans to collect network outcome measures, conduct evaluation of those measures, and create an electronic reporting system for the following new 2007 grant opportunities: Health Information Technology Planning Grants, Electronic Health Record Implementation Health Center Controlled Networks (HCCN), Health Information Technology Innovations for Health Center Controlled Networks, and High Impact Electronic Health Records Implementation for Health Center Controlled Networks and Large Multi Site Health Centers. In order to help carry out its mission, DSCA has created a set of performance measures that grantees will use to evaluate the effectiveness of their service programs and monitor their progress through the use of performance reporting data.

OHIT has developed an electronic performance measurement reporting instrument with HRSA's Office of Information Technology. The instrument will accomplish the following goals: monitor improved access to needed services, evaluate the productivity and efficiency of the networks, and monitor patient outcome measures. Grantees will submit their Progress Reports in a mid-year report and an accumulative annual progress report each fiscal year of the grant.

The estimates of burden are as follows:

Form	Estimated number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HCCN Progress Reports	46	2	92	6 hrs	552

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: October 18, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–20939 Filed 10–23–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on 301–443–1129.

The following request has been submitted to the OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)—Revision

This is a request for revision of the Nursing Education Loan Repayment Program (NELRP) application and participant monitoring forms. The NELRP was originally authorized by 42 U.S.C. 297b(h) (section 836(h) of the Public Health Service Act) as amended by Public Law 100–607, November 4, 1988. The NELRP is currently authorized by 42 U.S.C. 297n (section 846 of the Public Health Service Act) as amended by Public Law 107–205, August 1, 2002.

Under the NELRP, registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary to receive loan repayment for up to 85 percent of their qualifying educational loan balance as follows: 30

percent each year for the first 2 years and 25 percent for the third year. In exchange, the nurses agree to serve full-time as a registered nurse for 2 or 3 years at a health care facility with a critical shortage of nurses.

NELRP requires the following information:

1. Applicants must provide information on their nursing education, employment, and proposed service site;

2. Applicants must provide information on their outstanding nursing educational loans;

3. Applicants must provide banking information from their financial institution; and

4. Employers must provide information on the health care facility and on the employment status of applicants and participants.

ESTIMATES OF ANNUALIZED HOUR BURDEN ARE AS FOLLOWS FOR APPLICANTS

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NELRP Application	5,000	1	5,000	1.5	7,500
Loan Verification Form	5,000	3	15,000	1	15,000
Applicant Employment Verification Form	5,000	1	5,000	.5	2,500
Payment Information Form	5,000	1	5,000	1	5,000
Application Checklist	5,000	1	5,000	.5	2,500
Pre-Award Confirmation Checklist	600	1	600	.25	150
Total	5,000		35,600		32,650

ESTIMATES OF ANNUALIZED HOUR BURDEN ARE AS FOLLOWS FOR PARTICIPANTS

Participant semi-annual employment verification form	1,300	2	2,600	.5	1,300
Total	1,300	2	2,600	.5	1,300

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: October 17, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–20940 Filed 10–23–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements (OMB No. 0915–0307): Revision

Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Ryan White HIV/AIDS Program), requires that grantees expend 75 percent of Parts A, B, and C funds on core medical services, including antiretroviral drugs, for individuals with HIV/AIDS identified and eligible under the legislation, effective fiscal year (FY) 2007. In order for grantees under Parts A, B, and C to be exempted from the 75 percent core medical services requirement, they must request and receive a waiver from HRSA, as required in the Act.

Beginning in FY 2008, HRSA will utilize new standards for granting waivers of the core medical services requirement for the Ryan White HIV/AIDS Program. These standards meet the intent of the Ryan White HIV/AIDS Treatment Modernization Act of 2006 to increase access to core medical services, including antiretroviral drugs, for persons with HIV/AIDS and to ensure that grantees receiving waivers demonstrate the availability of such services for individuals with HIV/AIDS identified and eligible under Title XXVI of the PHS Act. The core medical services waiver uniform standard and waiver request process will apply to Ryan White HIV/AIDS Program grant awards under Parts A, B, and C of Title XXVI of the PHS Act. Core medical services waivers will be effective for a one-year period consistent with the grant award period.

Grantees must submit a waiver request with the annual grant application containing the certifications and documentation which will be utilized by HRSA in making determinations regarding waiver requests.

Grantees must provide evidence that all of the core medical services listed in the statute, regardless of whether such services are funded by the Ryan White HIV/AIDS Program, are available to all individuals with HIV/AIDS identified and eligible under Title XXVI of the PHS Act in the service area within 30 days.

The estimated annual burden is as follows:

Application	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Waiver Request	20	1	20	6.5	130
Total	20		20		130

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 18, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–20945 Filed 10–23–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NICHD Research Partner Satisfaction Surveys

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The proposed information collection was previously published in the **Federal Register** on July 25, 2007, in Volume 72, No. 142, pages 40887–40888, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NICHD Research Partner Satisfaction Surveys. *Type of Information Collection Request:* Extension without change. *Need and Use of Information Collection:* Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the NICHD seeks to obtain OMB's generic approval to conduct customer satisfaction surveys surrounding its research programs and activities.

The NICHD was founded in 1963. Its mission is to ensure, through research, the birth of healthy infants and the opportunity for each to reach full potential in adulthood, unimpaired by physical or mental disabilities. The NICHD conducts and supports research on the many factors that protect and enhance the process of human growth and development. The developmental focus of the NICHD means that its research portfolio is unusually broad. NICHD programs include research on infant mortality, birth defects, learning disorders, developmental disabilities, vaccine development, and demographic and behavioral sciences, among others. In addition to supporting basic research, clinical trials, and epidemiological studies that explore health processes, the NICHD forms partnerships with organizations or institutions to ensure effective use of scientific findings and research products.

The NICHD utilizes strategic assessments to support Institute planning and policy development, and to help determine programmatic and scientific objectives and priorities. Research partner surveys will augment NICHD's ongoing efforts to assess research-related activities. The two principal objectives are: (1) To measure the personal satisfaction of research partners with NICHD programs or initiatives, including both responsiveness to scientific aims and convenience of operations to support research and its effective use; and (2) to learn from research partners the ways in which the NICHD can improve the overall planning and management of it programs and initiatives. Findings will be used to improve NICHD's research programs and initiatives in the following ways: (1) To assess the effectiveness and efficiency of operations; (2) to identify opportunities for improving program performance; (3) to develop plans to incorporate innovations in program management; (4) to measure partner satisfaction and document program outcomes for governmental accountability reporting; and (5) to identify the need for creating new programs or initiatives or restructuring existing ones to respond to emerging scientific opportunities.

Frequency of Response: Annual [As needed on an ongoing and concurrent basis]. *Affected Public:* Members of the public, researchers, practitioners, and other health professionals. *Type of Respondents:* Members of the public; eligible grant applicants and actual applicants (both successful and unsuccessful); clinicians and other health professionals; and actual or potential clinical trials participants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 28,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* Varies with survey type, see below; and *Estimated Total Annual Burden Hours Requested:* 5,883. The annualized cost to respondents is estimated at: $109,541.46. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Web-based	24,000	1	0.167	4,008.00
Telephone	2,000	1	0.50	1,000.00

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Paper	1,500	1	0.25	375.00
In-person	500	1	1.00	500.00
Total	28,000			5,883.00

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project, contact Paul L. Johnson, NIH NICHD Office of Science Policy, Analysis and Communication (OSPAC), 9000 Rockville Pike, Bldg. 31, Rm. 2A–18, Bethesda, Maryland 20892–2425, or call non-toll-free at 301–402–3213. You may also e-mail your request to *pjohnson@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 17, 2007.

Paul L. Johnson,

Project Clearance Liaison, NICHD National Institutes of Health.

[FR Doc. E7–20910 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Micro-RNA Sequence Transforms Non-Functional T-Lymphocytes to Highly Functional: Key to Improved Immunotherapy for the Treatment of Cancers

Description of Technology: This technology is directed to the therapeutic use of microRNA-181a in the adoptive immunotherapy of cancer.

The adoptive transfer of anti-tumor T cells after a lymphodepleting regimen can result in the regression of metastatic cancer both in mouse and human, but the production of highly-reactive, tumor-specific T cells still represents a barrier to broad implementation of T cell-based immunotherapies. This technology enables the use of microRNA (miR)-181a, a recently identified intrinsic modulator of T-cell receptor (TCR) signaling, to improve anti-tumor T cell responsiveness. Micro-RNAs are short RNA molecules that regulate the activity of genes and appear to control biological processes.

We found that genetic engineering of T lymphocytes with miR-181a dramatically augmented the function of poorly responsive human tumor-infiltrating lymphocytes and TCR-engineered peripheral blood lymphocytes, resulting in potent anti-tumor reactivity. Furthermore, in a mouse model, miR-181a increased the function of self/tumor-specific $CD8^+$ T cells enabling effective tumor destruction in the absence of vaccination or exogenous cytokines that were otherwise essential requirements. This technology is the first reported use of a miRNA gene as tool in the treatment of disease.

Applications: The microRNA sequence (''miR-181a'') can be used to enhance the tumor recognizing capacity of T-lymphocytes against several tumors.

This technology can be used for selective treatment of several cancers more effectively.

Advantages: Proof-of concept pre-clinical data are available and clinical trials are currently being planned.

This technology is based on adoptive immunotherapy, which is now an accepted and effective form of cancer treatment.

Benefits: The microRNA identified has the potential to broaden and enhance the scope of adoptive immunotherapy.

Development Status: Pre-clinical work has been completed and clinical studies are forthcoming.

Inventors: Dr. Nicholas P. Restifo et al. (NCI).

Relevant Publication: Q Li et al. miR-181a is an intrinsic modulator of T cell sensitivity and selection. Cell. 2007 Apr 6;129(1):147–161.

Patent Status: U.S. Provisional Application filed 25 May 2007 (HHS Reference No. E–224–2007/0–US–01).

Licensing Status: This technology is available for licensing under an exclusive or non-exclusive patent license.

Licensing Contact: Michelle A. Booden, PhD; 301/451–7337; *boodenm@mail.nih.gov*.

Collaborative Research Opportunity: The Surgery Branch of the National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the therapeutic use of microRNA-181a in the adoptive immunotherapy of cancer. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Use of HDAC Inhibitors for the Prevention and Cure for Brain Metastases of Cancers

Description of Technology: The increased survival of primary and metastatic cancers consequential of improved therapies has resulted in increased brain metastases. Few treatment options are available for cancer patients with central nervous system (CNS) metastasis. There is a need for new treatment options for CNS metastases especially brain metastases originating outside the CNS.

The present invention provides a method of treating a localized carcinoma CNS metastasis of extra-CNS origin. More specifically, the method comprises of treating a localized carcinoma CNS metastasis of extra-CNS origin with a histone deacetylase (HDAC) inhibitor (HDACI) originating in one or more organs such as lung, breast, liver, colon, and prostate. The HDACI can be any HDACI that is capable of crossing the blood-brain barrier (BBB) such as vorinostat.

Advantages: Vorinostat has been approved by the FDA for the treatment of cutaneous manifestations in patients with cutaneous T-cell lymphoma (CTCL) who have progressive, persistent or recurrent disease on or following two systemic therapies, and as such, has efficacy and tolerability data.

Benefits: More than 40,000 breast cancer deaths are estimated to occur in 2007. Majority of these deaths are due to metastases of the breast cancer. Approximately, 10%–20% of women with metastatic breast cancer are estimated to develop brain metastasis and the median survival after brain cancer metastasis is only one year. This technology may effectively treat breast cancer brain metastases and thus improve overall survival and quality of life of patients suffering from cancer. The current cancer chemotherapeutic market is valued at $42 billion and expected to grow.

Inventors: Patricia S. Steeg et al. (NCI).

Development Status: In vivo animal model data available with vorinostat.

Patent Status: U.S. Provisional Application No. 60/891,856 filed 02 Feb 2007 (HHS Reference No. E–084–2007/0–US–01).

Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov*.

Dated: October 11, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–20909 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the fourteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Monday, November 19, 2007 and 8:30 a.m. to approximately 5:30 p.m. on Tuesday, November 20, 2007, at the Ronald Reagan Building and International Trade Center—1300 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The agenda will focus on three key issues—finalization of the SACGHS report on the opportunities and challenges in realizing the promise of pharmacogenomics; the oversight of genetic testing; and the preparedness of health professionals to incorporate genetic and genomic tests and services into clinical and public health practice. With regard to the oversight of genetic testing, SACGHS' draft report to the Secretary of Health and Human Services will be released for public comment in early November. The Committee will provide an extended period of time during the November meeting for members of the public to provide their perspectives on the oversight issues and comments on the Committee's draft report and recommendations. The Committee will also be briefed about an international analysis of oversight systems for genetic testing with a focus on the U.S. system.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary. Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carr@od.nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

Dated: October 17, 2007.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 07–5240 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants for Behavioral Research in Cancer Control [R03].

Date: November 14, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rhonda J. Moore, PhD., Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Suite 701, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *moorerh@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Community Clinical Oncology Program & Minority Based Community Clinical Oncology.

Date: November 26–27, 2007.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard Marriott Gaithersburg Washingtonian Ctr., 204 Boardwalk Place, Gaithersburg, MD 20878.
Contact Person: Gerald G. Lovinger, PhD., Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301–496–7987, *lovingeg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 16, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5236 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.
Date: December 3, 2007.
Open: December 3, 2007, 7:30 a.m.–3:30 p.m.
Agenda: Strategies for Maximizing the Nation's Investment in Cancer.
Place: Ritz Carlton San Juan Hotel, 6961 Avenue of the Governors, Isla Verde, Carolina, Puerto Rico 00979.
Closed: December 3, 2007, 4 p.m.–6 p.m.
Agenda: Strategies for Maximizing the Nation's Investment in Cancer and discuss potential topics for the 2008/2009 series.
Place: Ritz Carlton San Juan Hotel, 6961 Avenue of the Governors, Isla Verde, Carolina, Puerto Rico 00979.
Contact Person: Abby Sandler, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, 301/451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 16, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5237 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(6), as amended. The discussions could disclose personal information concerning NCI Staff and/or its contractors, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.
Open: November 27, 2007, 8 a.m. to 4:45 p.m.
Agenda: Program reports and presentations, Business of the Board.
Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, Maryland 20892.
Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, Maryland 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.
Closed: November 27, 2007, 4:45 p.m. to 5:30 p.m.
Agenda: Review intramural program site visit outcomes; Discussion of confidential personnel issues.
Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, Maryland 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398 Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5242 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 7-8, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Roberta Binder, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Room 3130, Bethesda, MD 20892–7616, 301–496–7966, *rbinder@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.956, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: October 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5234 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Pathogenic and Protective T-Cell Responses.

Date: November 19, 2007.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 5600, 6700B Rockledge Drive, Room 3120, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Lynn Rust, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3120, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: October 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5235 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, The Environmental Determinants of Diabetes in the Youth (TEDDY) Study.

Date: November 15, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Review of Ancillary R01 Applications to Major Ongoing NIDDK Kidney Disease Clinical Studies.

Date: November 16, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: October 17, 2007.

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5238 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Design for the Neurological Sciences.
Date: October 29, 2007.
Time: 11:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Peter B. Guthrie, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, HIV/AIDS Vaccines Study Section.
Date: November 16, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Mary Clare, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.
Date: November 19, 2007.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, member Conflict: Child Psychopathology and Developmental Disabilities.
Date: November 20, 2007.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD (Telephone Conference Call).
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Behavioral and Physiological Responses to Stress.
Date: November 26, 2007.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD (Telephone Conference Call).
Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.
Date: November 27, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Union Square, 480 Sutter Street, San Francisco, CA 94108.
Contact Person: Shiv A. Prasad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.
Date: November 29, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Signaling.
Date: November 30, 2007.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD (Telephone Conference Call).
Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: October 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5241 Filed 10–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW174407]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in the South Maysdorf Coal Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Wednesday, November 28, 2007. Sealed bids must be submitted on or before 4 p.m., on Tuesday, November 27, 2007.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Cordero Mining Company, Gillette, Wyoming. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following-described lands located in central Campbell County approximately 3–4 miles east of State Highway 59, 6–11 miles south of Bishop Road, and adjacent to the western and southern lease boundary of the Cordero Rojo mine:

T. 46 N., R. 71 W., 6th P.M., Wyoming.
Section 4: Lots 5 through 7, 10 through 15, 18 through 20;
Section 9: Lots 1 through 5;
Section 10: Lots 1 through 6;
Section 11: Lots 1 through 12;

T. 47 N., R. 71 W., 6th P.M., Wyoming.
Section 21: Lots 1 through 3, 6 through 11, 14 through 16;
Section 28: Lots 1 through 3, 6 through 11, 14 through 16;
Section 33: Lots 1 through 3, 6 through 11, 14 through 16.

Containing 2,900.24 acres more or less.

The tract is adjacent to Federal and State of Wyoming leases to the east and north controlled by the Cordero Rojo Mine. It is adjacent to additional unleased Federal coal to the west and south. It is also adjacent to about 540 acres of private coal controlled by the Cordero Rojo Mine. All of the acreage offered has been determined to be suitable for mining except for the main line railroad right-of-way in the far southeast portion of the LBA. Features such as the county roads and pipelines can be moved to permit coal recovery. The Belle Fourche River crosses the LBA, but can be diverted to allow mining. In addition, numerous oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. The surface estate of the tract is owned by Cordero Mining Company, Cordero Rojo, Inc., a private individual, and the United States.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mine. On the LBA tract, the Wyodak seam is generally a single seam averaging about 60 feet thick. An area containing no coal trends east/west across portions of section 4 in the southern portion of the LBA. Also, the southern portion of the LBA may have a rider of approximately 5–7 feet thick, which splits off the main seam with interburden ranging from 4–25 feet thick. Overburden depths to the Wyodak seam range from 60–340 feet thick on the LBA.

The tract contains an estimated 288,082,000 tons of mineable coal. This estimate of mineable reserves includes the main Wyodak seam and rider mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the adjacent State of Wyoming or private coal although these reserves are expected to be recovered in conjunction with the LBA. It also excludes coal within and along the railroad right of way as required by typical mining practices. The total mineable stripping ratio (BCY/Ton) of the coal is about 3.5:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining.

The Maysdorf South LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8404 BTU/lb with about 0.29% sulfur. These quality averages place the coal reserves near the lower/middle of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, November 27, 2007, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW174407, are available for inspection at the BLM Wyoming State Office.

Dated: July 10, 2007.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. E7–20771 Filed 10–23–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–07–1610–PH–24–1A]

Notice of Resource Advisory Committee Meeting

AGENCY: Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and The Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

DATES: The GSENMAC will meet November 28 and 29, 2007; with an optional field trip on November 27.

ADDRESSES: The GSENMAC will meet at the GSENM Visitor Center, Conference Room, 745 HWY 89 East, Kanab, Utah.

FOR FURTHER INFORMATION: Contact Larry Crutchfield, Public Affairs Officer, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644–4310, or e-mail *larry_crutchfield@blm.gov*.

SUPPLEMENTARY INFORMATION: The meeting on November 28 will begin at 8:30 a.m. and conclude at 6 p.m.; the meeting on November 29 will begin at 8:30 a.m. and conclude at 2:30 p.m. A geology/paleontology-oriented field trip is scheduled from 12 p.m. to 5 p.m. on November 27.

The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) was first appointed by the Secretary of Interior on September 26, 2003, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA) and was subsequently reappointed June 2, 2006. As specified in the Monument Management Plan, the GSENMAC will have several primary tasks (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives. (2) Review appropriate research proposals and make recommendations on project necessity and validity. (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above. (4) Could be consulted on issues such as protocols for specific projects.

Topics to be presented and discussed by the GSENMAC include: Management updates to the GSENMAC; the Administrative Sub-committee report; and the integration of science and management.

Members of the public are welcome to address the committee beginning at 5

p.m. local time on November 28, 2007, in Kanab, Utah, at the GSENM Visitor Center. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn.: Larry Crutchfield, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings, including the field trip, are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: October 18, 2007.

Brad Exton,

Monument Manager, Grand Staircase-Escalante National Monument.

[FR Doc. E7–20922 Filed 10–23–07; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–300–1020–PH; DDG080001]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Salmon, Idaho on November 28 and 29, 2007. Day one of the meeting will be an orientation session aimed at training new members. An overview of each of the Idaho Falls District's four field offices will be presented. The second day will include updates of ongoing issues, including the Challis Field Office Travel Management Plan and Snake River Activity/Operations Plan. The meeting will also consider proposed fee increases on the Salmon-Challis National Forest and Upper Snake Field Office, as provided by the Recreation Enhancement Act. Finally, the RAC will set its quarterly meeting schedule for 2008. Other topics will be scheduled as appropriate. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Joanna Wilson or Sonja Shadow, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7550. E-mail: *Joanna_Wilson@blm.gov or Sonja_Shadow@blm.gov*.

Dated: October 17, 2007.

Sonja Shadow,

RAC Coordinator, Public Affairs Specialist.

[FR Doc. E7–20807 Filed 10–23–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–08–1150–PH–24–1A]

Notice of Utah's Resource Advisory Council and Recreation Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah's Resource Advisory Council (RAC) and Recreation Resource Advisory Committee (RRAC) Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and The Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet December 11, 2007. The Recreation Resource Advisory Council will meet January 16–17, 2008.

ADDRESSES: The RAC will meet at the Homewood Suites, Rio Grande Conference Room, 423 West 300 South, Salt Lake City, Utah, (December 11, 2007). The RRAC will meet at the Holiday Inn, Sands-Sky Conference Rooms, 838 Westwood Blvd., Price, Utah, (January 16–17, 2008).

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah, 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Utah. On December 11, from 8:30 a.m.–3:30 p.m., the Council will hold elections of officers and will be given an update from the State Director on ''What's Happening in Utah.'' Additional topics include: presentations on the oil and gas permitting process, OHV management subgroup, Healthy Lands Initiative, Take it Outside Initiative, and BLM's involvement in the Crandall Canyon Mine. A half-hour public comment period is scheduled to begin from 3 p.m.–3:30 p.m. Written comments may be sent to the Bureau of Land Management's address listed above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

On January 16 (1 p.m.–4:30 p.m.) and January 17 (8 a.m.–11:15 a.m.), the Recreation Resource Advisory Council will be given recreation fee presentations from the BLM's Monticello Field Office (Cedar Mesa/Kane Gulch), the Price Field Office (Cleveland Lloyd Dinosaur Quarry) and from the U.S. Forest Service—Flaming Gorge NRA, American Fork Canyon, Mirror Lake Corridor, Manti-La Sal REA and Fishlake Campground. A half-hour public comment period is scheduled to begin from 10:30 a.m.–11 a.m. Written comments may be sent to the Bureau of Land Management addressed listed above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: October 17, 2007.

Selma Sierra,

State Director.

[FR Doc. E7–20906 Filed 10–23–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of October 27, 2007 meeting.

SUMMARY: This notice sets forth the date of the October 27, 2007 meeting of the Flight 93 Advisory Commission. An unusual combination of events in the preparation, approval, and transmission of this notice has resulted in the publication of this notice less than 15 days before the date of the meeting. The National Park Service has made extraordinary efforts to provide notification to all commission members and to the public.

DATE: The public meeting of the Advisory Commission will be held on Saturday, October 27, 2007, from 10:30 a.m. to 1:30 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the New York City Police Museum, 100 Old Slip, New York, New York (between Water and South Streets).

The meeting will be connected to the Flight 93 National Memorial Office via teleconference located at 109 West Main Street, Suite 104, Somerset, Pennsylvania 15501. The public is encouraged and welcome to attend either the meeting in New York City, or in Somerset.

Agenda:

The October 27, 2007 joint Commission and Task Force meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Commission Minutes from July 29, 2007.

(3) Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.

(4) Old Business.

(5) New Business.

(6) Public Comments.

(7) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: September 28, 2007.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 07–5253 Filed 10–23–07; 8:45 am]

BILLING CODE 4312–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

Route 66 Corridor Preservation Program Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that the Route 66 Corridor Preservation Program Advisory Council will hold a meeting November 1 and 2, 2007, in Pasadena, California.

DATES: November 1 and 2, 2007.

ADDRESSES: 1. The November 1 meeting will be held from 8:30 to 11:30 a.m. at the Saga Motor Hotel, 1633 East Colorado Boulevard, Pasadena, CA.

2. The November 2 meeting will be held from 9 a.m. to 5 p.m. at the City of Pasadena Permit Center Hearing Room, 175 North Garfield Avenue, Pasadena, CA.

3. Written statements should be sent to Michael Taylor, Route 66 Corridor Preservation Program Manager, National Trails System—Santa Fe, National Park Service, P.O. Box 728, Santa Fe, NM 87504–0728.

FOR FURTHER INFORMATION CONTACT: Michael Taylor, 505–988–6742.

SUPPLEMENTARY INFORMATION: The Route 66 Corridor Preservation Program Advisory Council was established to consult with the Secretary of the Interior on matters relating to the Route 66 Corridor Preservation Program, including recommendations for ways to best preserve important properties along Route 66, grant and cost-share awards to eligible applicants owning or administering historic properties along the Route 66 Corridor, and technical assistance provided by the NPS to partners along the route.

The matters to be discussed include:

- Committee report on accountability and measurement;
- committee report on education and outreach;
- committee report on preservation management;
- strategic media initiative;
- report on preliminary economic impacts of heritage tourism along Route 66;
- report on motel preservation initiatives along Route 66.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. The public comment period is scheduled from 9 a.m.–10 a.m. on Friday, November 2. Any member of the public may file a written statement concerning the matters to be discussed with Michael Taylor, Route 66 Corridor Preservation Program Manager.

Minutes of the meeting will be available for public inspection at the Route 66 Corridor Preservation Program Office, located in Room 122, Old Santa Fe Trail Building, 1100 Old Santa Fe Trail, Santa Fe, NM.

An exceptional set of circumstances involving the charter renewal for this advisory council has resulted in the publication of this notice less than 15 days before the date of the meeting. Cancellation of the meeting at this time would impose an undue hardship for the representatives from 8 different states who have made arrangements to travel to the meeting. We believe the public interest would be best served by holding the meeting and having the Council perform its duties on the scheduled dates.

Dated: October 15, 2007.

Bernard C. Fagan,

Deputy Chief, National Park Service Office of Policy.

[FR Doc. E7–20955 Filed 10–23–07; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1124 and 1125 (Preliminary)]

Electrolytic Manganese Dioxide From Australia and China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Australia and China of electrolytic manganese dioxide, provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigations under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On August 22, 2007, a petition was filed with the Commission and Commerce by Tronox LLC, Oklahoma City, OK, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of LTFV imports of electrolytic manganese dioxide from Australia and China. Accordingly, effective August 22, 2007, the Commission instituted antidumping duty investigation Nos. 731–TA–1124 and 1125 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 28, 2007 (72 FR 49309). The conference was held in Washington, DC, on September 12, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 9, 2007. The views of the Commission are contained in USITC Publication 3955 (October 2007), entitled *Electrolytic Manganese Dioxide from Australia and China: Investigation Nos. 1124 and 1125 (Preliminary).*

Issued: October 18, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–20908 Filed 10–23–07; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Dean A. Pinkert recused himself to avoid any conflict of interest or appearance of a conflict.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–932 (Review)]

Certain Folding Metal Tables and Chairs From China

Determinations

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on certain folding metal tables and certain folding metal chairs from China would be likely to lead to continuation or recurrence of material injury to industries in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on May 1, 2007 (72 FR 23799) and determined on August 6, 2007 that it would conduct an expedited review (72 FR 46245, August 17, 2007). Notice of the scheduling of the Commission's review was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 17, 2007 (72 FR 46245).

The Commission transmitted its determinations in this review to the Secretary of Commerce on September 28, 2007. The views of the Commission are contained in USITC Publication 3952 (September 2007), entitled *Certain Folding Metal Tables and Chairs from China: Investigation No. 731–TA–932 (Review).*

Issued: October 18, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–20904 Filed 10–23–07; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Previously Approved Collection, With Change; Comments Requested

ACTION: 60-day notice of information collection under review: COPS Application Attachment to SF–424.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 24, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Application Attachment to SF–424.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Application Attachment to SF–424. The COPS Application Attachment to SF–424 is the result of a COPS Office business process reengineering effort aimed at standardization as required under the grant streamlining requirements of Pub. L. 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. This form streamlined application forms across all COPS Office programs and reduced the burden on applicants due the applicant's ability to use the same form for multiple programs, thus reducing the need for applicant's to learn how to complete multiple differing forms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 6,200 respondents annually will complete the form within 10 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 62,000 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 17, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–20864 Filed 10–23–07; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0097]

Office of Community Oriented Policing Services; Agency Information Collection

Activities: Extension of a previously approved collection; comments requested.

ACTION: 60-Day Notice of Information Collection Under Review: COPS Budget Detail Worksheets.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 24, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the extension of the previously approved collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Budget Detail Worksheets.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Budget Detail Worksheets. The COPS Budget Detail Worksheets are the result of a COPS Office business process reengineering effort aimed at standardization as required under the grant streamlining requirements of Pub. L. 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. The new worksheets standardize the budget forms across all COPS Office programs and should reduce the burden on applicants due the applicant's ability to use the same form for multiple programs, thus reducing the need for applicant's to learn how to complete multiple differing forms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

It is estimated that 6,200 respondents annually will complete the form within 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 12,400 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 17, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–20865 Filed 10–23–07; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *BK IV AS, LLC*, Civ. No. 2:07–652–FtM–34–SPC, was lodged with the United States District Court for the Middle District of Florida on October 11, 2007. This proposed Consent Decree concerns a complaint filed by the United States against BK IV AS, LLC, pursuant to section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Stephen Samuels, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20006–3986 and refer to *United States* v. *BK IV AS, LLC,* DJ # 90–5–1–1–18124.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, 2–194 United States Courthouse and Federal Bldg., 2110 First Street, Fort Myers, FL 33901. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Stephen Samuels,

Assistant Chief, Environment Defense Section, Environment & Natural Resources Division.

[FR Doc. 07–5258 Filed 10–23–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on September 28, 2007, a proposed Consent Decree (Decree) in *United States* v. *E.I. du Pont de Nemours and Company, et al.,* Civil Action No. 07–CV–1304–MLB, was lodged with the United States District Court for the District of Kansas.

In this action, the United States, on behalf of the Environmental Protection Agency (EPA), seeks recovery of response costs incurred and to be incurred from E.I. du Pont de Nemours and Company, NL Industries, Inc., and Sunoco, Inc. (Settling Defendants) relating to releases of hazardous substances at the Waco Subsite of the Cherokee County Superfund Site in Cherokee County, Kansas, and at the Waco Designated Area of the Jasper County Superfund Site in Jasper County, Missouri. The Decree provides that Settling Defendants will perform the remedy selected by EPA for the areas of the Waco Subsite and Waco Designated Area owned or operated by the Settling Defendants or their predecessors. This work is estimated to cost $3.09 million. In addition, the Settling Defendants agree to pay EPA's future oversight costs, and $23,288 in past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *E.I. du Pont de Nemours and Company, et al.,* D.J. Ref. 90–11–2–08539.

The Decree may be examined at the Office of the United States Attorney, 1200 Epic Center, 301 N. Main, Wichita, Kansas 67202. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $65.75 (.25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5256 Filed 10–23–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 15, 2007, a proposed Consent Decree in *United States* v. *Exxon Mobil Corporation and Cargill Dry Corn Ingredients, Inc.*, Civil Action No. 5:07–cv–00400, was lodged with the United States District Court for the Eastern District of North Carolina, Western Division. The proposed Consent Decree resolves the United States' claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, relating to injunctive relief and response costs incurred at the Gurley Pesticides Burial Superfund Site in Selma, Johnston County, North Carolina. Under the proposed Consent Decree, Settling Defendants will perform all required work, reimburse $423,148.70 in past response costs, and pay all interim and future costs incurred at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to the U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. Comments should refer to *United States* v. *Exxon Mobil Corporation and Cargill Dry Corn Ingredients, Inc.*, DJ Ref. 90–11–2–07506/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Civil Division, 310 Bern Ave, Suite 800, Federal Building, Raleigh, North Carolina 27601, and at

the U.S. EPA, 61 Forsyth Street, SW., Atlanta, GA 30303. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Consent Decree may be obtained by submitting a request by mail to the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy of this document by mail, please enclose a check, payable to the ''U.S. Treasury,'' in the amount of $22.25 for the Consent Decree only or $67.75 for the Consent Decree and Appendices (25 cents per page reproduction cost). If making the request by e-mail or fax, please forward a check in the appropriate amount to the Consent Decree Library at the above stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5257 Filed 10–23–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Pre-Hearing Statement (LS–18). A copy of the information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 24, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Title 20, CFR 702.317 provides for the referral of claims under the Longshore Act for formal hearings. This section provides that, before a case is transferred to the Office of Administrative Law Judges, the district director shall furnish each of the parties or their representatives with a copy of a pre-hearing statement form. Each party shall, within 21 days after receipt of each form, complete it and return it to the district director. Upon receipt of the forms, the district director, after checking them for completeness and after any further conferences that, in his/her opinion, are warranted, shall transmit the forms to the Office of the Chief Administrative Law Judge. The LS–18 is used to refer cases to the Office of the Administrative Law Judges for formal hearings under the Act. This information collection is currently approved for use through May 31, 2008.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

II. Current Actions

The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to prepare cases for formal hearings under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Pre-Hearing Statement.

OMB Number: 1215–0085.

Agency Number: LS–18.

Affected Public: Individuals or households; business or other for-profit.

Total Respondents: 5,400.

Total Annual Responses: 5,400.

Estimated Total Burden Hours: 918.

Time Per Response: 10 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $2,376.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 18, 2007.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. E7–20856 Filed 10–23–07; 8:45 am]

BILLING CODE 4510–CM–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 23, 2007 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on August 9, 2007 (72 FR 44874 and 44875). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

Title: Presidential Libraries Museum Visitor Survey.

OMB number: 3095–NEW.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the museums at the Presidential libraries.

Estimated number of respondents: 75,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion (when an individual visits a Presidential Library).

Estimated total annual burden hours: 18,750 hours.

Abstract: The survey will be comprised of a set of questions designed to allow for a statistical analysis that will ultimately provide actionable information to NARA. The survey includes questions that measure the visitor's satisfaction in general and with specific aspects of their visit. These questions serve as dependent variables for analytical purposes. Other questions provide attitudinal, behavioral, and demographic data that are used to help understand variation in the satisfaction variables. Using statistical analyses, Harris Interactive will determine the factors that drive the visitor's perceptions of quality and satisfaction with the Library they visited. Additionally, natural groupings of visitors defined by similarity based on these attitudinal, behavioral, and demographic variables can be developed and targeted for outreach purposes.

The information collected through this effort will inform program activity, operation, and oversight, and will benefit Library and NARA staff and management in making critical decisions about resources allocation, museum operation and program direction.

Dated: October 11, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–20925 Filed 10–23–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential Historical Materials. Notice is hereby given that, in accordance with sections 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and § 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential Historical Materials.

DATES: The National Archives and Records Administration (NARA) intends to make these materials described in this notice available to the public beginning Wednesday, November 28, 2007.

In accordance with 36 CFR 1275.44, any persons who believe it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense before Friday, November 23, 2007.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park, located at 8601 Adelphi Road, College Park, Maryland beginning at 10 a.m. on Wednesday, November 28, 2007. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facilities.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Timothy Naftali, Director, Richard Nixon Presidential Library, 714–938–3117 or 301–837–3117.

SUPPLEMENTARY INFORMATION: The following files will be made available in accordance with this notice.

1. Previously restricted materials. Volume: 4 cubic feet

A number of documents which were previously withheld from public access have been reviewed for release and/or declassified under the mandatory review provisions of Executive Order 12958, as amended, or in accordance with 36 CFR 1275.56 (Public Access Regulations). The documents are from file segments for the White House Special Files, Staff Member and Office Files; the National Security Council File series including the Henry A. Kissinger Office Files and the National Security Council Institutional Files.

2. Alpha Name Files:

Allen, George
Annenberg, Walter
Bore
Byrd, Robert
Cheney, L-R
Felt
Greenspan, A-E
Hope, Bob
Hughes, Helena
Kaplan, P.
Lavrakas, Paul
Palmer, A
Presley, A-E
Reagan, Ronald
Rosenbaum, A-C
Rumsfeld, Donald
Sinatra, Frank
Snow, J
Stevens, John
Sullivan, (Rev) Leon Howard
Thurlow

3. White House Central Files, Staff Member and Office Files, White House Press Office Files. Volume: 52 cubic feet.

The files contain materials created by the Press Office for distribution to the media including White House press releases and press conference transcripts.

4. White House Central Files, Oversized Attachments Files. Volume: <1 cubic foot.

These three files are Oversized Attachment Files #5185, #10408, and #12546 which are cross-referenced to the Labor-Management (LA) Series of the White House Central Files, Subject Files. The Oversized Attachment Files were a means of filing and organizing materials that were too bulky or odd-sized to be placed in a file folder.

5. Record Group 220, Records of Temporary Committees, Commissions, and Boards, Records of the Cabinet Committee on Education. Volume: 14 cubic feet.

The Cabinet Committee on Education served as a Federal Government point of contact for states undergoing school desegregation.

Dated: October 18, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–20968 Filed 10–23–07; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247–LR and 50–286–LR; ASLBP No. 07–858–03–LR–BD01]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29,1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3)

A Licensing Board is being established pursuant to an August 1, 2007 Notice of Opportunity for Hearing (72 Fed. Reg. 42,134) regarding the April 23, 2007 application for renewal of Operating License Nos. DPR–26 and DPR–64, which authorize Entergy Nuclear Operations, Inc. (Entergy) to operate the Indian Point Nuclear Generating Units 2 and 3, respectively, at 3216 megawatts thermal for each unit. Entergy's renewal application seeks to extend the current operating licenses—which expire on September 9, 2013 (Unit 2) and December 12, 2015 (Unit 3)—for an additional twenty years. This proceeding concerns requests for hearing filed by The New York Affordable Reliable Electricity Alliance, the New York City Economic Development Corporation, and Friends of Sustainable Energy, USA, Inc. The Board is comprised of the following administrative judges:

Lawrence G. McDade, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Kaye D. Lathrop, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 18th day of October 2007.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E7–20952 Filed 10–23–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

South Texas Project Nuclear Operating Company; Notice of Receipt and Availability of Application for a Combined License

On September 20, 2007, South Texas Project Nuclear Operating Company (STPNOC, or the applicant) filed with the Nuclear Regulatory Commission (NRC, the Commission) pursuant to section 103 of the Atomic Energy Act and 10 CFR Part 52, an application for a combined license (COL) for two Advanced Boiling Water Reactor (ABWR) nuclear power plants at the South Texas Project Electrical Generating Station located in Matagorda County, Texas, and identified as South Texas Project Units 3 and 4.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 50.33, and an agreement to limit access to sensitive information submitted pursuant to 10 CFR 50.37. To support its application, the applicant also requested an exemption from certain requirements of section IV.A.2 of Appendix A to 10 CFR Part 52, as documented in its September 20, 2007, letter. The NRC will review this exemption request and render its decision as part of the acceptance review of the application.

Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission(s Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML072830407. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.*

Dated at Rockville, Maryland, this 16th day of October, 2007.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Deputy Director for Licensing Operations, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E7–20861 Filed 10–23–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments To Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards. This notice amends the **Federal Register** notice issued September 14, 2007, by adding two additional names.

The following individuals are appointed as members of the NRC Performance Review Board (PRB)

responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Darren B. Ash, Deputy Executive Director for Information Services and Chief Information Officer.
R. Wiliam Borchardt, Director, Office of New Reactors.
Samuel J. Collins, Regional Administrator, Region I.
Karen D. Cyr, General Counsel.
Margaret M. Doane, Director, Office of International Programs.
John A. Grobe, Associate Director for Engineering and Safety Systems, Office of Nuclear Reactor Regulation.
Timothy F. Hagan, Director, Office of Administration.
Bruce S. Mallet, Deputy Executive Director for Reactor and Preparedness Programs (Designate), Office of the Executive Director for Operations.
William M. McCabe, Chief Financial Officer.
Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs.
Luis A. Reyes, Executive Director for Operations.
Martin J. Virgilio, Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel.
Brian W. Sheron, Director, Office of Nuclear Regulatory Research.
Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: October 24, 2007.

FOR FURTHER INFORMATION, CONTACT: Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–2076.

Dated at Rockville, Maryland, this 12th day of October 2007.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board.

[FR Doc. E7–20917 Filed 10–23–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Import Statistics Relating to Competitive Need Limitations; 2007 Annual GSP Review; Petitions Requesting CNL Waivers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the availability of eight-month 2007 import statistics relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP) program. The eight-month 2007 import statistics identify those articles for which the full-year 2007 trade levels may exceed statutory CNLs. The eight-month 2007 trade data is available at: [GSP: January-August 2007 Trade Data Relating to CNLs]: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2007_Annual_Review/Section_Index.html.*

As previously announced in the **Federal Register** (72 FR 28527 (May 21, 2007)), the deadline for submission of petitions to waive the CNLs for individual beneficiary developing countries with respect to GSP-eligible articles is 5 p.m., November 16, 2007. Petitions must conform to the requirements as set forth in the May 21, 2007, **Federal Register** notice. Public comments regarding possible *de minimis* waivers and possible GSP redesignations will be requested in a subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act sets out the two competitive need limitations (CNLs). When the President determines that a BDC exported to the United States during a calendar year either: (1) A quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($130 million for 2007), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent CNL''), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year. However, Section 503(d) of the 1974 Act, sets forth the criteria under which the President may grant a waiver of the CNL for articles imported from specific BDCs. Product petitions requesting CNL waivers for GSP-eligible articles from beneficiary developing countries that exceed the CNLs in 2007 must be filed in the 2007 Annual Review.

Under section 503(c)(2)(F) of the 1974 Act, the President may also waive the 50 percent CNL with respect to an eligible article imported from a BDC if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year ($18.5 million for 2007). Comments on *de minimis* waivers will be requested after publication of a separate **Federal Register** notice in February 2008.

II. Implementation of Competitive Need Limitations

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2008, unless granted a waiver before that date by the President. CNL exclusions will be based on full calendar-year 2007 import statistics. Full calendar-year 2007 data for individual tariff subheadings will be available in February 2008 on the Web site of the U.S. International Trade Commission at *http://dataweb.usitc.gov/*.

III. January–August 2007 Import Statistics

In order to provide advance notice of articles that may exceed the CNLs for 2007, ''January—August 2007 Trade Data Relating to CNLs'' that cover the first eight months of 2007 can be viewed at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2007_Annual_Review/Section_Index.html.* If unable to access these statistics, contact the GSP Subcommittee of the Trade Policy Staff Committee, which will make alternate arrangements to provide the lists.

The January-August 2007 statistics are organized to show, for each article, the

Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC of origin, the value of imports of the article for the first eight months of 2007, and the percentage of imports of that article from that BDC of total imports of that article from all countries. The list includes: (1) GSP-eligible articles from BDCs that have already exceeded the CNLs because their import levels in 2007 already amount to more than $130 million, or by an amount greater than 50 percent of the total value of U.S. imports of that product in 2007; and (2) GSP-eligible articles that, based upon the eight-month 2007 data, exceed $100 million or an amount greater than 42 percent of the total value of U.S. imports of that product.

The ''D'' flag next to articles on the list indicates articles that, based on the eight-month 2007 trade data, may be eligible for a *de minimis* waiver because the total value of imports of that article from all countries is equal to or less than $12.5 million. Comments on *de minimis* waivers will be requested after publication of a separate **Federal Register** notice in February 2008.

The list published on the USTR Web site is provided for informational purposes only. The list is computer-generated and based on January—August 2007 data, and may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the list, all determinations and decisions regarding the CNLs of the GSP program will depend on full, calendar-year 2007 import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2007 import data with regard to the possible application of GSP CNLs and submission of a petition to waive the CNLs. Please see the notice announcing the 2007 GSP Review that was published in the **Federal Register** on May 21, 2007 for further details on submitting a petition for a CNL waiver.

Marideth J. Sandler,

Executive Director for the GSP Program, Chair, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. E7–20964 Filed 10–23–07; 8:45 am]

BILLING CODE 3190–W8–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: OPM proposes to add a new system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)).

DATES: The new system will be effective without further notice on December 3, 2007, unless we receive comments that result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Sydney Smith-Heimbrock, Deputy Associate Director, Center for Human Capital Implementation and Assessment, Office of Personnel Management, 1900 E Streets, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, 202–606–2430.

SUPPLEMENTARY INFORMATION: The Federal Competency Assessment Tool is a web-based instrument for assessing current proficiency levels for mission critical occupations such as leadership and human resource management. It allows individuals to conduct a competency self assessment and supervisors to assess the competencies of their employees and of the position to determine competency strengths and areas for improvement.

The tool advances agencies' human capital management efforts in accordance with the Human Capital Assessment and Accountability Framework. The tool supports efforts in succession management, competency gap closure, competency development, and recruitment and retention. The tool contains competency models, a proficiency scale, a self and supervisor assessment, suggested proficiency levels for determining gaps, and agency-level access to reports and data.

The U.S. Office of Personnel Management (OPM) intends that the tool will have minimal effect on the privacy of individuals. Individual data from the tool is only available to agency designated points of contact for the tools. Additionally, oversight entities (e.g., Government Accountability Office) may request to review such data. The major reports of the tool provide aggregate data, not individual data. If requested, OPM may disclose aggregate level data from the tool via a governmentwide report. The tool was developed with minimizing the risk of unauthorized access to the system of records as an objective. To ensure the risk is minimized, the tool is hosted on a secure server and offers agency-designated access passwords.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Office of Personnel Management (OPM)/CENTRAL-X

SYSTEM NAME:

Federal Competency Assessment Tool.

SYSTEM LOCATION:

Associate Director, Division for Human Capital Leadership and Merit System Accountability, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001. Records pertaining to voluntary assessments of designated occupations such as leadership and human resources management are located on a contractor server. Records pertaining to pre-determined competencies (e.g., leadership, human resources management, or performance management) may be forwarded to designated agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal employees who have voluntarily registered and completed the Federal Competency Assessment Tool.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises voluntary self-assessments of competencies against a proficiency scale. The assessments are tied to user accounts, that contain (a) registration information that includes demographic data to help determine participation; (b) self assessment information; and (c) an assessment by the supervisor.

The registration information includes the following mandatory information:

a. Registered users' e-mail address
b. User determined password
c. First name
d. Last name
e. Department/Agency to which the participant belongs
f. Pay plan
g. Grade
h. Occupational group/family
i. Occupational Specialty, if applicable
j. Work role, if applicable (e.g., executive, manager, supervisor, team lead)

The registration information also includes the following optional information:

(1) Work address
(2) City

(3) State
(4) Zip code
(5) Country
(6) Work telephone
(7) Education level
(8) Estimated years until retirement
(9) Time in occupation

Self assessment information includes the employee's determination of his/her proficiency level against a set of competencies using a proficiency scale. The assessment by the supervisor includes the supervisor's determination of a requesting employee's proficiency level and the desired proficiency level of the position using the same set of competencies and proficiency scale.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS OR AMENDMENTS:

5 U.S.C. 1103, 1402, and 4117.
Executive Orders 9830 and 13197.

PURPOSE:

The Federal Competency Assessment Tool is a web-based instrument for assessing the proficiency levels of Federal employees in key competencies. The tools allow an individual to conduct a competency self assessment and supervisors to assess the competencies of their employees to determine competency strengths and areas for improvement. Agencies can use the results of the assessments to support their competency gap analyses, succession management, and development efforts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when OPM becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

2. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To disclose information to another Federal agency or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding, and such information is deemed by OPM to be arguable, relevant and necessary to the litigation.

4. By the National Archives and Records Administration in records management and inspections.

5. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling description statistics, and making analytical studies to support the function for which the records were collected and maintained.

6. By OPM, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

7. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

a. OPM, or any component thereof; or

b. Any employee of OPM in his or her official capacity; or

c. Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

d. The United States, when OPM determines that litigation is likely to affect OPM or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be arguable relevant and necessary to the litigation.

8. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

9. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission.

10. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices of matters before the Federal Service Impasses Panel.

11. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB circular No. A–19.

12. To provide an official of another Federal agency information needed in the performance of official duties related to succession planning, workforce analysis, gap closure, competency development, recruitment and retention.

13. To disclose to a requesting Federal agency, information in connection with the hiring, retention, separation, or retirement of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; the classification of a job; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that OPM determines that the information is relevant and necessary to the requesting party's decision on the matter.

14. To provide individual users the ability to view self entered data on individual competency proficiency levels.

15. To provide reports to agencies on aggregate level data of proficiency levels in identified competencies across the Government.

16. To provide agency specific raw data reports to agencies on individual level data related to proficiency levels in identified competencies.

17. To disclose aggregate level data from the Federal Competency Assessment Tools via a governmentwide report.

18. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in a relational database management system hosted on a contractor's Internet server, accessed via a password-restricted system. Duplicate records also exist on magnetic tape back ups.

RETRIEVABILITY:

Designated points of contact from the U.S. Office of Personnel Management and participating agencies can retrieve reports that aggregate the results of

individual and supervisor assessments, without specifically identifying individuals. Agencies can request raw data reports that will contain the identity of individuals. An employee can retrieve individual reports (which contain a record of how the individuals assessed themselves, along with how the supervisor assessed the position). All reports are accessed via the Internet through a password-restricted system.

SAFEGUARDS:

These electronic records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Completed verifications are archived to a storage disk nightly and retained on a server for five years. When records are purged from the server, the records are transferred to a CD or other electronic media. Records in electronic media are electronically erased. CD or other electronic media are maintained for five years.

SYSTEM MANAGER AND ADDRESS:

Deputy Associate Director, Center for Human Capital Implementation and Assessment, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager or designee. Individuals must furnish the following information for their records to be located and identified:

a. Name

b. Name and address of office in which currently and/or formerly employed in the Federal service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact their agency point of contact or the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name

b. Name and address of office in which currently and/or formerly employed in the Federal service.

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records in this system should contact the agency point of contact or system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name

b. Name and address of office in which currently and/or formerly employed in the Federal service.

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. The supervisor of the individual to whom the information pertains, upon that individual's request.

[FR Doc. E7–20848 Filed 10–23–07; 8:45 am]

BILLING CODE 6325–43–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Tuesday, November 13, 2007, at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to approve the audited financial statements for Fiscal Year 2007, to present the 2007 Fiscal Year-End Budget Report and to adopt budget adjustments for Fiscal Year 2008, to adopt the Tennessee Hollow Finding of No Significant Impact, to adopt Public Use Limits of Battery Caulfield Road, to select the development team for the Thornburgh project, to provide an Executive Director's report, and to receive public comment in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to November 5, 2007.

Time: The meeting will begin at 6:30 p.m. on Tuesday, November 13, 2007.

ADDRESSES: The meeting will be held at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: October 18, 2007.

Karen A. Cook,

General Counsel.

[FR Doc. E7–20920 Filed 10–23–07; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56669; File No. SR–FINRA–2007–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Relating to Reporting of Odd-Lot Transactions to FINRA

October 17, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend its trade reporting rules to change the manner in which members are required to report odd-lot transactions[5] to a FINRA Trade Reporting Facility (''TRF''),[6] the Alternative Display Facility (''ADF''), and the OTC Reporting Facility (''ORF'') (referred to herein as the ''FINRA Facilities''). Specifically, FINRA is proposing to: (1) Eliminate the requirement that members use the special ''.RO'' trade report modifier to indicate that an odd-lot transaction is reported in accordance with Section 3 of Schedule A to the By-Laws (''Section 3''); and (2) require members to report odd-lot transactions ''for publication,'' *i.e.*, mark reports of odd lots as ''tape eligible,'' as applicable.

The text of the proposed rule change is available at FINRA's principal office, from the Commission's Public Reference Room, and on FINRA's Web site (*http://www.finra.org*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 12, 2006, the Commission approved SR–NASD–2006–055,[7] which requires members to report to FINRA in an automated manner all transactions, including odd-lot transactions, that must be reported to FINRA and that are subject to a regulatory transaction fee pursuant to Section 3.[8] Today, with the exception of OTC Equity Securities, odd-lot transactions are not reported for purposes of public dissemination;[9] members report such transactions to FINRA for regulatory purposes only. In this regard, members are required to include a special ''.RO'' trade report modifier on reports of odd lots to denote that the transaction is reported in accordance with Section 3 (the ''.RO Modifier''). FINRA uses the .RO Modifier to identify odd-lot transactions that are required to be included in FINRA's calculation of its Section 31 obligation to the Commission.

With the implementation of Regulation NMS and a new trade report messaging format, members are required to include the .RO Modifier on trade reports of odd-lot transactions in the same information level (or byte) as other regulatory modifiers. Thus, in certain instances, members may be faced with prioritizing and determining which modifier should be included in the trade report submitted to FINRA. This can lead to confusion, inaccuracies, and inconsistencies in trade reporting which, in turn, can impair FINRA staff's ability to produce a complete and accurate audit trail and properly assess transaction-related fees.[10] FINRA staff has determined that the .RO Modifier can be eliminated because the FINRA Facilities can systematically identify odd-lot transactions from the number of reported shares.

Accordingly, FINRA is proposing to amend its trade reporting rules[11] to eliminate the requirement that members use the .RO Modifier on reports of odd-lot transactions. FINRA also is proposing to amend its trade reporting rules[12] to require that members report odd-lot transactions ''for publication'' or as ''tape eligible,'' as applicable. Thus, members will report odd-lot transactions in the same manner that they report round-lot transactions today. Although odd-lot transactions will be marked ''tape eligible'' pursuant to the proposed rule change, the FINRA Facilities will suppress such transactions from public dissemination. Today, with the exception of certain OTC Equity Securities, odd-lot transactions are not publicly disseminated by FINRA or the appropriate Securities Information Processor.[13]

The proposed rule change will ensure consistency in FINRA's trade reporting rules applicable to over-the-counter transactions in NMS stocks and OTC Equity Securities, promote a more complete and accurate audit trail, and enable FINRA to properly assess applicable transaction-related fees. FINRA notes that the proposed rule change will not impose a new requirement that members report odd-lot transactions, but merely will change the manner in which such transactions are reported to the FINRA Facilities.[14]

Finally, FINRA also is proposing certain technical, non-substantive changes to NASD Rules 6130A(c), 6130C(f), and 6130E(f) to maintain consistency in the trade reporting rules relating to the FINRA Facilities to the extent practicable.

FINRA is filing the proposed rule change for immediate effectiveness. FINRA will announce the operative date of the proposed rule change on its Web site. In recognition of the systems changes that the proposed rule change

[5] For purposes of the trade reporting rules, an odd lot is less than a ''normal unit of trading,'' which is defined as ''100 shares of a security unless, with respect to a particular security, NASD determines that a normal unit of trading shall constitute other than 100 shares.'' *See* NASD Rules 4200, 4200A, 4200C, and 4200E.

[6] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the TRFs are now doing business as the FINRA TRFs (*i.e.*, the FINRA/Nasdaq TRF, the FINRA/NSX TRF, and the FINRA/NYSE TRF). The formal name change of each TRF is pending, and once completed FINRA will file a separate proposed rule change to reflect those changes in the Manual.

[7] *See* Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (order approving SR–NASD–2006–055).

[8] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the Commission that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains funds to pay its Section 31 fees and assessments from its membership, in accordance with Section 3.

[9] *See* NASD Rules 4632(e) (relating to the NASD/Nasdaq TRF), 4632A(i) (relating to the ADF), 4632C(e) (relating to the NASD/NSX TRF), and 4632E(f) (relating to the NASD/NYSE TRF). Pursuant to current NASD Rule 6620, odd-lot transactions in OTC Equity Securities, as defined in NASD Rule 6110, are required to be reported to FINRA for purposes of publication.

[10] FINRA rules require members to use special trade report modifiers to indicate that away-from-the-market sales (the ''.RA'' modifier) and exercises of OTC options (the ''.RX'' modifier) are reported in accordance with Section 3. Unlike the .RO Modifier, these modifiers do not compete with other trade report modifiers. Accordingly, FINRA is not proposing to eliminate the .RA and .RX modifiers.

[11] NASD Rules 6130(g) (relating to the NASD/Nasdaq TRF and ORF), 6130A(c) (relating to the ADF), 6130C(f) (relating to the NASD/NSX TRF), and 6130E(f) (relating to the NASD/NYSE TRF).

[12] NASD Rules 4632(e) (relating to the NASD/Nasdaq TRF), 4632A(i) (relating to the ADF), 4632C(e) (relating to the NASD/NSX TRF), and 4632E(f) (relating to the NASD/NYSE TRF).

[13] FINRA currently disseminates trade information relating to transactions of fewer than 100 shares in certain high-priced OTC Equity Securities. In some cases, trades in certain high-priced issues are almost exclusively for fewer than 100 shares and therefore, without this dissemination policy, trading data for such issues would be effectively unavailable to market participants. The proposed rule change does not amend this dissemination policy.

[14] Members should continue to report the offsetting ''riskless'' leg of an odd-lot riskless principal transaction as they do today, *i.e.*, by submitting a non-tape (or clearing-only) report, as applicable. *See* NASD Rules 4632(d)(3)(B) (relating to the NASD/Nasdaq TRF), 4632A(e)(1)(C)(ii) (relating to the ADF), 4632C(d)(3)(B) (relating to the NASD/NSX TRF), 4632E(e)(3)(B) (relating to the NASD/NYSE TRF), and 6620(d)(3)(B) (relating to the ORF).

will require, the operative date will be at least 90 days after the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote a more complete and accurate audit trail and enable FINRA to properly assess applicable transaction-related fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17] FINRA believes that the filing is appropriately designated as ''non-controversial'' because the proposed rule change is not imposing a new requirement on members to report odd-lot transactions, but merely is changing the manner in which members must report such transactions to the FINRA Facilities. In accordance with Rule 19b–4(f)(6)(iii),[18] FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2007–017 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-FINRA–2007–017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2007–017 and should be submitted on or before November 14, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20899 Filed 10–23–07; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 210.19b–4(f)(6)(iii).

[19] *See* e-mail dated August 13, 2007 from Lisa C. Horrigan, Associate General Counsel, FINRA to Katherine A. England, Assistant Director, Division of Market Regulation, Commission.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–56671; File No. SR–ISE–2007–88]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Qualified Contingent Trade Exemption

October 18, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the ISE. The ISE has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to incorporate the qualified contingent trade exemption into ISE Rule 2107 (Priority and Execution of Orders). The text of the proposed rule change is available at the ISE, the Commission's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Public Reference Room, and *www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend ISE Rule 2107 (Priority and Execution of Orders) to incorporate the exemption granted by the Commission for qualified contingent trades from Rule 611(a) of Regulation NMS under the Act.[5] In accordance with Rule 611 of Regulation NMS, ISE Rule 2107 governs the priority and execution of equity orders on the ISE Stock Exchange[6] and prohibits orders from being executed at prices that are inferior to Protected Quotations[7] available at other Trading Centers.[8] ISE Rule 2107(c) provides Trade-Through[9] exceptions, as set forth in Rule 611 of Regulation NMS. Accordingly, the Exchange proposes to add the qualified contingent trade exemption to Rule 2107(c).

A contingent trade ''is a multi-component trade involving orders for a security and a related derivative, or, in the alternative, orders for related securities, that are executed at or near the same time.'' Proposed Rule 2107(c)(8) provides an exemption for any Trade-Throughs caused by the execution of an order involving one or more NMS stocks (each an ''Exempted Stock Transaction'') that are components of a qualified contingent trade. A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component order is in an NMS stock; (2) all components are effected with a product or price contingency that has been agreed to by the parties; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; (6) the exempted transaction is fully hedged as a result of the other components of the contingent trade; and (7) the exempted transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least $200,000.

The Exchange also proposes to clean-up the rule text in the Supplementary Material to Rule 2107, which contains provisions applicable to trading in securities prior to the ''Trading Phase Date'' of Regulation NMS as that date has since past.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5).[10] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] As required under Rule 19b–4(f)(6)(iii),[13] the ISE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[14] However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE requests that the Commission waive the 30-day operative delay period for ''non-controversial'' proposals under Rule 19b–4(f)(6)[16] and make the proposed rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule language is identical to language contained in the Commission's exemption for qualified contingent

[5] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (order granting an exemption for each NMS stock component of certain qualified contingent trades from Rule 611(a) of Regulation NMS).

[6] The ISE Stock Exchange is a facility of ISE, LLC.

[7] *See* ISE Rule 2100(c)(16).

[8] *See* ISE Rule 2100(c)(20).

[9] *See* ISE Rule 2100(c)(19).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] *Id.*

[16] *Id.*

trades.[17] In addition, the Commission notes that the proposed rule language is identical to a rule of the Chicago Stock Exchange, Inc. previously approved by the Commission.[18] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–88 and should be submitted on or before November 14, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20898 Filed 10–23–07; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* note 5.

[18] *See* Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (order approving SR–CHX–2006–05).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11067 and # 11068]

Florida Disaster # FL–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 10/16/2007.

Incident: Fire.

Incident Period: 09/20/2007.

Effective Date: 10/16/2007.

Physical Loan Application Deadline Date: 12/17/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 07/16/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Broward.

Contiguous Counties:

Florida: Collier, Hendry, Miami-Dade, Palm Beach.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	6.250
Homeowners Without Credit Available Elsewhere:	3.125
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 11067 5 and for economic injury is 11068 0.

The States which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 16, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–20943 Filed 10–23–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106902–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106902–98 (TD 8833), Consolidated Returns—

Consolidated Overall Foreign Losses and Separate Limitation Losses (§ 1.1502–9(c)(2)(iv)).

DATES: Written comments should be received on or before December 24, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses.

OMB Number: 1545–1634.

Regulation Project Number: REG–106902–98.

Abstract: The regulation provides guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Average Time per Respondent: 1hr., 30 min.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all the collections of information covered by this notice.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20851 Filed 10–23–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5300 and Schedule Q (Form 5300)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5300, Application for Determination for Employee Benefit Plan, and Schedule Q (Form 5300), Elective Determination Requests.

DATES: Written comments should be received on or before December 24, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination for Employee Benefit Plan (Form 5300), and Elective Determination Requests (Schedule Q (Form 5300)).

OMB Number: 1545–0197.

Form Number: Form 5300 and Schedule Q (Form 5300).

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The information requested on Schedule Q (Form 5300) relates to the manner in which the plan satisfies certain qualification requirements concerning minimum participation, coverage, and nondiscrimination.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 185,000.

Estimated Time per Respondent: 43 hours, 6 minutes.

Estimated Total Annual Burden Hours: 7,972,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20852 Filed 10–23–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–152354–04]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–152354–04, Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).

DATES: Written comments should be received on or before December 24, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).

OMB Number: 1545–1931.

Regulation Project Number: REG–152354–04.

Abstract: These regulations provide guidance concerning the requirements for designated Roth contributions to qualified cash or deferred arrangements under section 401(k). The IRS needs this information to insure compliance with section 401(k) and (m) and section 402A.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and state, local or tribal governments.

Estimated Number of Respondents: 157,500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 157,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20853 Filed 10–23–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–104924–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–104924–98, Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities (§§ 1.475(e)–1 and 1.475(f)–2).

DATES: Written comments should be received on or before December 24, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities.

OMB Number: 1545–1640.

Regulation Project Number: REG–104924–98.

Abstract: The collection of information in this proposed regulation is required by the Internal Revenue Service to determine whether an exemption from mark-to-market treatment is properly claimed. This information will be used to make that

determination upon audit of taxpayers' books and records.

Current Actions: There is no change to this existing proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization and Individuals.

Estimated Number of Recordkeepers: 1,000.

Estimated Time per Recordkeeper: 1 hour.

Estimated Total Annual Burden Recordkeeping Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20857 Filed 10–23–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Interagency Notice of Change in Control

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before December 24, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Interagency Notice of Change in Control.

OMB Number: 1550–0032.

Form Number: 1622.

Regulation requirement: 12 CFR Parts 574.3 and 574.4.

Description: The Regional Office must review the information contained in the Change of Control notices if the application is considered eligible for delegated action. If the application is considered non-delegated, OTS' Washington staff must also review the application. The OTS must review the information in these applications to determine that no person is acting directly or indirectly, or in concert with one or more other persons, to acquire control of an insured depository institution through the purchase, assignment, transfer, pledge, or other disposition of voting stock of the thrift institution, unless OTS has been afforded sixty days prior written notice to review the proposal and to object to the acquisition.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit: Federal Government.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Time per Respondent: 30 hours.

Estimated Frequency of Response: Other: As required per transaction.

Estimated Total Burden: 698 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: October 18, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–20941 Filed 10–23–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of General Counsel (OGC), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 23, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0018'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW.,Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0018.''

SUPPLEMENTARY INFORMATION:

Title: Application for Accreditation as Service Organization Representative; Accreditation Cancellation Information, VA Form 21.

OMB Control Number: 2900–0018.

Type of Review: Revision of a currently approved collection.

Abstract: Service organizations are required to file an application with VA to establish eligibility for accreditation for representatives of that organization to represent benefit claimants before VA. VA Form 21 is completed by service organizations to establish accreditation for representatives, recertify the qualifications of accredited representatives, and to cancel representatives' accreditation due to misconduct or lack of competence. VA uses the information collected to determine whether service organizations representatives continue to meet regulatory eligibility requirements and to ensure claimants have qualified representatives to assist in the preparation, presentation, and prosecution of their claims for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 27, 2007, at page 35305.

Affected Public: Individuals or households, Not-for profit institutions, and State, Local, or Tribal Government.

Estimated Annual Burden: 1,003 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,780.

Dated: October 15, 2007.

By direction of the Secretary.

Denise McLamb,

Program Anaylst, Records Management Service.

[FR Doc. E7–20905 Filed 10–23–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 1465–1)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify problems or complaints in VA's health care services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 24, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 1465–1)'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Nation-wide Customer Satisfaction Surveys, VA Forms 1465–1 through 1465–4.

OMB Control Number: 2900–New (VA Form 1465–1).

Type of Review: New collection.

Abstract: The purpose of the Survey of Health Experience of Patients (SHEP) Survey is to systematically obtain information from VA patients to identify problems or complaints that need attention and to improve the quality of health care services delivered to veterans. Data will be use to measure improvement toward the goal of matching or exceeding the non-VA external benchmark performance in providing quality health care services to veterans.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. HCAHPS plus Inpatient Core-Long Form, VA Form 10–1465–1—2,500 hours.

b. HCAHPS plus Inpatient Core-Short Form, VA Form 10–1465–2—16,875 hours.

c. Outpatient Long Form, VA Form 10–1465–3—9,802 hours.

d. Outpatient Short Form, VA Form 10–1465–4—67,573 hours.

Estimated Average Burden Per Respondent:

a. HCAHPS plus Inpatient Core-Long Form, VA Form 10–1465–1—20 minutes.

b. HCAHPS plus Inpatient Core-Short Form, VA Form 10–1465–2—15 minutes.

c. Outpatient Long Form, VA Form 10–1465–3—25 minutes.

d. Outpatient Short Form, VA Form 10–1465–4—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. HCAHPS plus Inpatient Core-Long Form, VA Form 10–1465–1—7,500.

b. HCAHPS plus Inpatient Core-Short Form, VA Form 10–1465–2—67,500.

c. Outpatient Long Form, VA Form 10–1465–3—23,524.

d. Outpatient Short Form, VA Form 10–1465–4—202,720.

Dated: October 16, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–20924 Filed 10–23–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Infectious Disease-B	November 7, 2007	Hyatt Arlington.
Mental Hlth & Behav Sci-B	November 8, 2007	Hyatt Arlington.
Hematology	November 9, 2007	Hyatt Arlington.
Immunology-A	November 14, 2007	Hyatt Arlington.
Nephrology	November 16, 2007	Hyatt Arlington.
Mental Hlth & Behav Sci-A	November 19, 2007	L'Enfant Plaza Hotel.
Epidemiology	November 20, 2007	*VA Central Office.
Respiration	November 29, 2007	St. Gregory Hotel.
Cellular & Molecular Medicine	November 29, 2007	*VA Central Office.
Cardiovascular Studies	November 30, 2007	St. Gregory Hotel.
Immunology-B	November 30, 2007	L'Enfant Plaza Hotel.
Neurobiology-E	December 3, 2007	Hyatt Arlington.
Surgery	December 3, 2007	L'Enfant Plaza Hotel.
Infectious Diseases-A	December 4, 2007	*VA Central Office.
Clinical Research Program	December 5, 2007	L'Enfant Plaza Hotel.
Gastroenterology	December 6, 2007	L'Enfant Plaza Hotel.
Oncology	December 6–7, 2007	L'Enfant Plaza Hotel.
Neurobiology-A	December 7, 2007	*VA Central Office.
Neurobiology-D	December 10, 2007	*VA Central Office.
Endocrinology	December 10–11, 2007	St. Gregory Hotel.
Neurobiology-C	December 14, 2007	St. Gregory Hotel.

*Teleconference.

The addresses of the hotels and VA Central Office are: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA; L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC; St. Gregory Hotel, 2033 M Street, NW., Washington, DC; VA Central Office, 1722 Eye Street, NW., Washington, DC.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of each subcommittee meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 254–0288.

Dated: October 18, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–5229 Filed 10–23–07; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 72, No. 205

Wednesday, October 24, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 070817469–7596–01]

RIN 0694–AE11

Approved End-Users and Respective Eligible Items for the People's Republic of China (PRC) Under Authorization Validated End-User (VEU)

Correction

In rule document E7–20642 beginning on page 59164 in the issue of Friday, October 19, 2007, make the following correction:

On page 59164, in the first column, under the heading **DATES**, in the first and second lines, ''November 19, 2007'' should read ''October 19, 2007''.

[FR Doc. Z7–20642 Filed 10–23–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 24, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of CriticalHabitat for Piperia yadonii (Yadon's piperia); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU34

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Piperia yadonii (Yadon's piperia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the endangered *Piperia yadonii* (Yadon's piperia) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 2,117 acres (ac) (857 hectares (ha)) fall within the boundaries of the critical habitat designation. The critical habitat is located in Monterey County, California.

DATES: This rule becomes effective on November 23, 2007.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, in the branch of Endangered Species, at the Ventura Fish and Wildlife Office (VFWO), 2493 Portola Road, Suite B, Ventura, CA 93003. The final rule, economic analysis, and map are also available on the Internet at *http://www.fws.gov/ventura.*

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, VFWO, at the above address (telephone (805) 644–1766, ext. 319; facsimile (805) 644–3958). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 7 days a week and 24 hours a day.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on *Piperia yadonii*, refer to the proposed critical habitat rule published on October 18, 2006 (71 FR 61546) and the final listing rule published in the **Federal Register** on August 12, 1998 (63 FR 43100).

Previous Federal Actions

For more information on previous Federal actions concerning *Piperia yadonii*, refer to the final listing rule published in the **Federal Register** on August 12, 1998 (63 FR 43100) and proposed critical habitat rule published in the **Federal Register** on October 18, 2006 (71 FR 61546). On August 7, 2007, we published a notice announcing the availability of the draft economic analysis (DEA), and reopening of the public comment period (72 FR 44069). This comment period closed on September 6, 2007.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Piperia yadonii* in the proposed rule published on October 18, 2006 (71 FR 61546). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. The initial comment period ended December 18, 2006. We published newspaper notices on October 26, 2006, in the *Monterey Herald,* Monterey, California, inviting public comment on the proposed critical habitat designation.

During the comment period that opened on October 18, 2006, and closed on December 18, 2006, we received 9 comments directly addressing the proposed critical habitat designation: 3 from peer reviewers, 1 from a State agency, and 5 from organizations or individuals. During the comment period that opened on August 7, 2007, and closed on September 6, 2007, we received 8 comments directly addressing the proposed critical habitat designation and the draft economic analysis. All of these latter comments were from organizations or individuals and some organizations and individuals provided comments during both comment periods. Overall, 12 commenters supported a designation of critical habitat for *P. yadonii*, and 3 commenters opposed parts of the proposed designation. All comments and new information relating to the proposed critical habitat designation for *P. yadonii* are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three peer reviewers. The peer reviewers generally agreed that the technical information and primary constituent elements (PCEs) identified in the proposed designation were accurate and that those areas that we did propose as critical habitat should be included. However, all three peer reviewers suggested that the designation should be expanded to include additional areas and increase the size of existing units. They also provided additional information, clarifications, and suggestions to improve the final critical habitat rule and the conservation of the species. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Piperia yadonii*, and address them in the following summary.

Peer Reviewer Comments

1. *Comment:* One peer reviewer indicated that the proposed designation emphasizes land ownership and proposed land use over biological or ecological factors in determining the size and boundaries of units. The peer reviewer replicated the process we identified in the rule and provided an analysis of six of our proposed subunits in Units 1, 2, and 3 as support for this assertion. The peer reviewer showed that those subunits that were on, or surrounded by, typical (non-conservation oriented) private lands encompassed a substantially smaller proportion of the appropriate surrounding habitat for *Piperia yadonii* than those subunits that were on, or surrounded by, lands owned by a conservation-oriented organization. The peer reviewer further stated that an unbiased designation of critical habitat could provide great conservation benefit to *P. yadonii,* as evidenced by four policies in the County of Monterey General Plan update. These policies emphasize conservation of designated critical habitat areas in evaluating and approving proposed land uses. The peer reviewer recommended that we redo the designation, focusing solely on the presence of PCEs and eliminating any bias introduced by assigning preference to a hierarchy of land ownership types.

Our Response: Our method for designating areas as critical habitat was described in the proposed rule under the sections ''Criteria Used to Identify Critical Habitat'' and ''Mapping'' and is reiterated here. See our answer to comment 18. In determining the extent

of lands necessary to ensure the conservation and persistence of *Piperia yadonii,* we identified all areas that contain those biological and physical features essential to the conservation of the species. These lands include those that are either already protected, managed, or otherwise unencumbered by conflicting use (e.g., undeveloped County or City parks, proposed preservation areas). These populations are most likely to persist into the future and to contribute to the species' survival and recovery. We also included undeveloped Federal and State lands, then local agency and private lands with recognized resource conservation emphasis (e.g., lands owned by a conservation-oriented organization, undeveloped County or City parks), and finally other agency and private lands.

We agree that land use considerations were a factor used to delineate the boundaries of some units or subunits; however, we did not exclude from consideration any subunits based solely on land ownership. In those cases where we determined that a site had the features essential to the conservation of *Piperia yadonii,* we designated the site (e.g., Units 2b and 7). Where a site included a mix of land ownership (i.e., lands that were owned or proposed for conservation by the State and lands that were not), we typically reduced the subunit to the boundaries of the conservation-oriented lands, in an effort to minimize the designation of lands that were private or were used or proposed for activities that would not be conducive to conservation (e.g., development) while ensuring that sufficient lands were designated in each unit to enable the unit to serve its conservation function. We ensured that our designation included areas distributed throughout the geographic range of the species and encompassed the habitat variation in elevation, soil types, plant communities, and distance from the coast (inland versus coastal) present in *P. yadonii* occupied habitat.

2. *Comment:* One peer reviewer supported our inclusion of multiple subunits east of Highway 101 in the Prunedale Hills (Unit 3). The peer reviewer agreed with the Service's reasons for including these subunits (to conserve genetic variation and prevent range collapse) and further stated that the plant community at these somewhat xeric, less coastally influenced sites may be more stable in the long term, with slower rates of successional conversion to oak woodland, than those sites to the west. The peer reviewer stated that gradual, successional loss of suitable habitat may be a significant threat over the long term and suggested that, at a minimum, we scan high-resolution aerial photographs of currently occupied sites to identify and delineate regions where patches of broken canopy and scattered areas of bare ground are visible. The peer reviewer provided historical and current aerial photography of four subunits in chaparral and one subunit in Monterey pine forest to support the assertion that canopy cover throughout the range of *Piperia yadonii* has increased since the 1930s and 1940s.

Our Response: We have considered the information the peer reviewer provided and agree that increased canopy cover in the ridgetop maritime chaparral of the Prunedale Hills may threaten *Piperia yadonii* by reducing available habitat. We discussed this in the proposed rule under the ''Background'' and ''Special Management Considerations or Protections'' sections. Although the vegetation cover in the region in which Unit 3 is designated may be increasing more slowly than in those areas to the west (in the region of Units 1 and 2), the natural lands in and around Unit 3 are also more highly fragmented and developed than those areas west of Highway 1, around Units 1 and 2. With increasing development, the opportunities to use vegetation management tools, such as prescribed fire, which both reduce the vegetation canopy and alter soil nutrient availability in ways with which the chaparral plant community has evolved, are much reduced. Given the information we currently have, that greater fragmentation exists and that known population sizes of *P. yadonii* are generally smaller as one moves east in Unit 3, we are not proposing to increase the size of the subunits in Unit 3 in an attempt to capture areas of more open canopy. We have added discussion to the description of Unit 3, recognizing the potentially slower successional changes in Unit 3, and will consider this information in making conservation recommendations for the entire Prunedale Hills area.

3. *Comment:* Two peer reviewers questioned our decision not to include in the critical habitat designation those areas where *Piperia yadonii* populations inhabit less than 5 acres and are surrounded by development. One peer reviewer stated that not including these smaller populations is not conducive to the long-term conservation of the species, because they may have large impacts on gene flow and genetic diversity and because they can provide connectivity to larger populations that we did include in the designation. The peer reviewer specifically cited areas that support the Fort Ord, Skyline Drive, and Monterey Airport populations, none of which we included in the proposal. The peer reviewer urged the Service to work with landowners and other entities to develop a coordinated conservation strategy for these smaller populations.

Our Response: We recognize that all populations of *Piperia yadonii* may provide conservation value to the species and we indicated this in the proposed rule, as the Peer Reviewer acknowledged, by stating ''* * * those populations that have become isolated as a result of development may contribute to the conservation of the species through educational, research, and other mechanisms, but overall have a lower potential for long-term preservation and lesser conservation value to the species.'' We believe that small areas with surrounding development have a lower conservation value to the species because they are less likely to have and maintain the features that are essential to the conservation of the species. In general, we seek to identify the minimum amount and optimum distribution of lands that support the PCEs to designate as critical habitat. Therefore, we did not include all populations in this designation.

In determining which sites to select, we concluded that those populations that are in highly developed areas are less likely to act as intermediaries in facilitating gene flow between populations, because pollinators are less likely to successfully move through residential and commercial areas to reach these islands of native vegetation and because wind-dispersed seeds are less likely to land in areas suitable for germination in highly fragmented landscapes. Of the specific sites mentioned by the peer reviewer, the Monterey Airport property and those fragmented populations along Garden Road are surrounded by the greatest level of development. The Skyline Drive site (California Natural Diversity Database (CNDDB) element occurrence (EO) 19) is on the Monterey Peninsula where we designated the larger expanses of Monterey pine forest with larger populations of *P. yadonii* (Subunit 6a) and those smaller sites, like Crocker Grove (Subunit 6d), that include plant associations not represented elsewhere.

The Fort Ord site in Marina (CNDDB EO 9) had not been found in over a decade, when a single plant was rediscovered in 2006, while we were drafting this rule. The second, more recently discovered Fort Ord site, near the boundary of the Monterey Airport,

consists of fewer than 10 plants. We recognize that the Fort Ord sites, particularly the northern one, are geographically isolated from other concentrations of *Piperia yadonii* and, if the northern site is found to support a population, it may therefore harbor genetic diversity not found elsewhere in the range of *P. yadonii.* As further information on the genetic diversity of this species becomes available, we will evaluate it and refine our conservation strategy for *P. yadonii.* However, we cannot determine at this time that the area has the features that are essential for the conservation of the species. We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For this reason, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. We will continue to work with landowners on the conservation of *P. yadonii* throughout its range, including in those areas that are not designated as critical habitat.

4. *Comment:* One peer reviewer indicated that there are substantial gaps in the scientific information available on the genetics, seed dispersal, plant associations, and fire ecology of *Piperia yadonii.* The peer reviewer recommended that we collect this data in order to complete the critical habitat designation and to develop management strategies for *P. yadonii.* The peer reviewer provided observations on the response of two other *Piperia* species in California to fire. In one example, a small population of *P. leptopetala* may have been substantially reduced in abundance by a chaparral fire and in the other, a chaparral fire appears to have stimulated the above-ground expression of *P. cooperi.*

Our Response: We recognize that information on many attributes of the life history, genetics, and habitat needs of *Piperia yadonii* is extremely limited. Our critical habitat designations are based on the best scientific and commercial data available at the time of the designation. As more complete information becomes available for *P. yadonii,* we will incorporate it into our recovery strategy for this species. We appreciate the information the peer reviewer provided on fire ecology and recognize that genetic research is being conducted that may influence our understanding of genetic diversity within *P. yadonii.* While we do not develop management strategies as part of the designation of critical habitat, we do consider site-specific management strategies important to the conservation of the species and work with land owners, researchers, and others, to develop and implement them as part of the recovery process.

5. *Comment:* One peer reviewer recommended that we gather more information on pollinator flight range and seed dispersal in an attempt to determine if the critical habitat units are close enough to allow gene flow between them.

Our Response: We have contacted several research scientists who specialize in moths and have reevaluated the available literature on pollinators and seed dispersal in orchids. We believe there are no additional data available, beyond what we cited in the proposed rule, on either the seed dispersal distances of orchids or the flight distances of potential pollinators, that would allow us to determine the likelihood of gene flow between critical habitat units or subunits. While data on the flight distance of relatively large moths in the family Sphingidae (sphinx months) exist, very few data are available on the distances small moths may transport pollen. In our designation, we attempted to address the need to maintain gene flow between patches of plants that are within meters of one another. We did so by encompassing within the same subunits (e.g., in Units 1 and 2) those patches of *Piperia yadonii* plants that occur on the same ridgeline in maritime chaparral, and by encompassing multiple patches of plants within the same subunits (e.g., in Unit 6) in Monterey pine forest.

6. *Comment:* Two peer reviewers indicated that genetic diversity was not adequately considered in the criteria used to designate critical habitat. One peer reviewer suggested it could be considered a PCE, or that environmental proxies could be used in the absence of information on the spatial pattern of genetic variation in *Piperia yadonii.* One peer reviewer noted that genetic research on *P. yadonii* is underway and some results should soon be available.

Our Response: We agree that little is known about the spatial pattern of genetic variation in *Piperia yadonii* populations, and we are aware of, and are interested in, the genetic research on *P. yadonii* being conducted. Based on the Act, PCEs are always habitat features rather than intrinsic population characteristics. Therefore, genetic diversity cannot be considered a PCE. However, in this designation, we did consider that genetic variation may be a reflection of environmental variation. We have attempted to encompass variation in habitat, as an indicator of populations that may be exposed to differing selective pressures, and therefore may have diverged genetically and represent a range of genetic variation in *P. yadonii.* As we discussed in the proposed rule under ''Criteria Used to Identify Critical Habitat,'' our methods included designating sites that encompass the range of elevational differences, plant communities, and soil types in which *P. yadonii* occurs.

7. *Comment:* One peer reviewer stated that the designation should be more conservation-oriented toward *Piperia yadonii*, given that the species is dependent on biological associates, such as mycorhizzal (fungal) associates, Monterey pines, and pollinators. The peer reviewer indicated that these close associations make *Piperia yadonii* more vulnerable to environmental changes, such as climate change. The peer reviewer, therefore, recommended that the rule contain larger areas and additional areas beyond what was included in the proposed designation.

Our Response: We recognize that relatively little specific information exists on the relationship of *Piperia yadonii* to other biological associates within its habitat and the vulnerability of those associates to broad-scale environmental changes, such as forest structure changes due to pathogens or climate change. We previously funded research on *P. yadonii*'s breeding system and pollinators in an effort to determine the need for, and potential vulnerability of, pollinators. This research found that *P. yadonii* requires pollinators to set seed and is, therefore, highly dependent on pollinators, and that several of the likely pollinators of *P. yadonii* in the Monterey pine forest are moth species that have broad ranges and habitat preferences. Therefore, we are less concerned about the potential for environmental changes to affect pollinators in the Monterey pine forest plant communities. We recognize that little is known about the relative importance of the various species that pollinate *P. yadonii*, and that virtually nothing is known about pollination of *P. yadonii* in maritime chaparral. Therefore we have attempted to encompass the mosaic of adjacent plant community types in which patches of *P. yadonii* occur. Recognizing that larger sized units may potentially reduce the risk to *P. yadonii* from environmental change, we have attempted to designate as critical habitat areas of sufficient size to accommodate potential environmental changes. We have included reference to climate change in the discussion of how the PCEs were derived, but have not increased the size of any units beyond what we proposed.

8. *Comment:* One peer reviewer commented that the uncertainty of *Piperia yadonii's* actual range, its patchy distribution, and expected impacts of climate change constitute sufficient justification to designate units outside *P. yadonii*'s known range. The peer reviewer did not provide specific suggestions of locations that should be included.

Our Response: While we generally agree with the rationale presented by the reviewer, we only designate critical habitat in areas outside the geographical area occupied by the species at the time of listing where the best available information indicates that these areas are essential to the conservation of the species. We have included areas throughout the range of *Piperia yadonii* within this designation, although not every population has been included. Within each portion of *P. yadonii*'s range, we reviewed known locations and surrounding habitat that support the PCEs. Based on our current information, we have concluded that there are no areas outside the species' known range that are essential to the conservation of the species and that therefore should be included in the designation.

Comments From the Public

9. *Comment:* Two commenters noted the thoroughness and quality of the technical information in the background section of the proposed rule and in the discussion of the PCEs and generally supported a designation of critical habitat for *Piperia yadonii*. However, one commenter questioned why the proposed designation did not include all or part of every occurrence of *P. yadonii*. They recommended that the designation include all occurrences of *P. yadonii* and urged the Service to add suitable unoccupied habitat to the designation.

Our Response: See response to comment 3, above.

10. *Comment:* Several commenters stated that the level of detail in the maps provided was insufficient to determine what proposed areas are included or not included in the designation, both on the Monterey Peninsula and in northern Monterey County.

Our Response: We agree that it is often difficult to distinguish unit boundaries based on the resolution of maps published in the **Federal Register**. To provide additional clarity, we attempted to include adequate descriptions of the units in the proposed rule. We have reviewed those unit descriptions and have provided additional clarifying information to them in this final designation. For example, for units on the Peninsula, we included area names used in the environmental impact report for the Pebble Beach Company's proposed development (Monterey County 2005). The public can request more explicit maps of the designation by contacting our office using any one of the methods listed in the **FOR FURTHER INFORMATION CONTACT** section listed above.

11. *Comment:* One commenter requested that the 6-acre portion of Stevenson School campus be deleted from critical habitat Subunit 6a, on the Monterey Peninsula, because the school intends to convert the property to an athletic field for student use in the future. The commenter states that, due to the property's small size and location, this area is not essential to the conservation of *Piperia yadonii*, that enough habitat is being conserved on the Monterey Peninsula via the Pebble Beach Company's proposed mitigation for their development plan, and that the inclusion of school property in the proposed designation will have adverse impacts on the school. They provided materials describing the school and its proposed site plan.

Our Response: As we developed the designation, we evaluated all areas on the Monterey Peninsula that support the PCEs, including the area owned by Stevenson School. The Monterey Peninsula is the center of distribution of *Piperia yadonii* and supports over 70 percent of all known plants. The Stevenson School property supports Monterey pine forest contiguous with a larger extent of Monterey pine forest encompassed within Subunit 6a. Because of its connection to other Monterey pine forest with a natural understory, we do not consider it too small to have the features that are essential to the conservation of *P. yadonii*. Although it has abundant shrub cover in some areas, in other areas it supports a more open herbaceous understory with scattered patches of *P. yadonii* (Steeck, 2007). We evaluated the materials submitted by the commenter and the potential economic costs to Stevenson School from the proposed designation in our draft economic analysis. Based on the School's proposed plans for the site, we have decided to exclude this property from the final designation of critical habitat (see Exclusions Under Section 4(b)(2) of the Act section below for more information). We are available to work with Stevenson School representatives on the conservation and recovery of *P. yadonii* and their future school development plans.

12. *Comment:* One commenter stated that critical habitat on the Pebble Beach Company's property should include only those areas designated by the Pebble Beach Company for conservation purposes. They asserted that other areas are not essential to the conservation of *P. yadonii*. They provided specific recommendations for modifications to several subunits, including excising all current and proposed roads that pass through the subunits of Unit 6.

Our Response: We reviewed the materials submitted and grouped the requested modifications into four categories: (a) Requests to remove all current and proposed roads from the subunits of Unit 6; (b) small adjustment in boundaries where the designation appeared to extend beyond the boundaries of a proposed conservation or open space area into, or just beyond, existing roads or the golf course; (c) requests to remove areas supporting existing Monterey pine forest that the commenter indicates are ''lots of record'' but that Monterey County required be conserved, as mitigation, in the final environmental impact report (Monterey County 2005) for the Pebble Beach Company's proposed development; and (d) more substantial modifications, which we individually discuss in the response to Comment 13, below.

We addressed the former three categories in the following ways:

(a) Roads: The Service does not typically map critical habitat at this level of detail, due to the time involved in attempting to exclude small, linear areas that lack the PCEs and would divide polygons. Lands covered by roads or other structures that do not support the PCEs are excluded by text in the final rule, as explained in the Mapping section. We recognize that some roads currently exist, but that adjustments to their current alignments are proposed that would eliminate habitat containing the PCEs. We have excluded, under Section 4(b)(2) of the Act, proposed and existing roads in Unit 6 in recognition of the conservation agreement signed by the Service and Pebble Beach Company. This agreement and the exclusions are discussed further in the section, *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act*, below. See Summary of Changes from Proposed Rule, below, for more information.

(b) We have made some adjustments to the boundary of critical habitat in Subunit 6a around the corporate yard (a proposed development parcel (Monterey County 2005)), along Congress Road near the quarry site (extension of

boundary over a road), and north of area I–1 (where a relatively recently constructed structure is visible in 2005 aerial photography).

(c) We have excluded areas within Subunits 6a and 6c, including those referred to by the Pebble Beach Company as areas F–1, J, and part of Area L, that support the PCEs of critical habitat and are identified as required mitigation areas, with some allowance for development, in the FEIR for Pebble Beach Company's proposed development (Monterey County 2005). We make these exclusions in recognition of the conservation agreement signed by the Service and Pebble Beach Company. This agreement and the exclusions are discussed further in the section, *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act*, below. See Summary of Changes from Proposed Rule, below, for more information.

13. *Comment:* A commenter representing the Pebble Beach Company suggested that we consider that two areas included in Unit 6 of the proposal, Indian Village/Area L (Subunit 6c) and Area B (Subunit 6e), contain greater shrub cover or riparian habitat than *Piperia yadonii* typically prefers. They also recommended we remove a portion of Subunit 6a referred to as Area D and reduce Unit 4 (Aguajito), to encompass only the suitable low-growing maritime chaparral habitat contiguous with the existing occurrence.

Our Response: We have retained both Area B and its adjacent forested areas in Subunit 6e, as well as part of Area L and adjacent forest (Indian Village) in subunit 6c in this designation, because they contain the PCEs for *Piperia yadonii*. We have concluded that these areas have the features that are essential to conserve *P. yadonii*. We have excluded 2 ac (0.8 ha) of Subunit 6e (Area B) and about 9 acres (4 ha) of Area L in recognition of the overall benefits that designated critical habitat areas will receive under the conservation agreement signed by the Service and the Pebble Beach Company (see the section *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act* below for a discussion of this exclusion).

For Unit 4 (Aguajito), we have reviewed the habitat proposed in the subunits and have considered the unique nature of the maritime chaparral on the shale and sandstone-derived soils within a large expanse of maritime chaparral and Monterey pine forest and concluded that the subunits we are designating contain the features essential to the conservation of *P. yadonii*. However, we have excluded 49 acres of this unit in recognition of the overall benefits that Unit 4 will receive under the conservation agreement signed by the Service and the Pebble Beach Company (see the section *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act* below for a discussion of this exclusion).

We have reviewed the habitat in subunit 6a, Area D, and agree with the commenter that it does not contain the features essential for the conservation of *Piperia yadonii*. We conclude that the dominance of coast live oak and open canopy with relatively few Monterey pines makes it less suitable for *P. yadonii*. Therefore, we have removed 35 ac (14 ha) of Subunit 6a that do not contain the PCEs from this final critical habitat designation. See Summary of Changes from Proposed Rule, below, for more information.

14. *Comment:* Three commenters recommended expansion of Subunit 6a to include Area F–2, about 17 acres (7 ha) in Area F3, and an additional 13 ac (5 ha) of Area PQR, as defined in the Pebble Beach Company's proposed development.

Our Response: We did not propose or designate Areas F–2, most of F–3, or the 13 ac (5 ha) in PQR because these locations support fewer *Piperia yadonii* plants compared to other locations in the Del Monte Forest that we are designating as critical habitat. These areas are also proposed for development by the Pebble Beach Company. Although we proposed conservation area F–1 as critical habitat, it is part of the exclusion we are making in this final designation, based on the conservation agreement we have signed with the Pebble Beach Company. See the section *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act* below for a discussion of this exclusion. Please also see our response to Comment 1 and 18.

15. *Comment:* One commenter suggested that the Service should expand Subunit 6b to include all of Area MNOUV, which supports one of the two largest occurrences of *Piperia yadonii* known to exist. Area MNOUV is the name given to the collective areas that support 116 acres of Monterey pine forest and are proposed for development as a golf course by the Pebble Beach Company. The commenter referred to language in our proposed designation in which we indicated that the conservation role of *P. yadonii* critical habitat units is to support viable core populations. The commenter stated that Area MNOUV supports one of two viable core populations on the Peninsula and, as such, the Service should follow its own guidelines and include it in the designation.

Our Response: Please see our response to Comment 18 for a description of how we designated critical habitat. We recognize that Subunit 6b is just one part of the large *Piperia yadonii* population found in Area MNOUV. Area MNOUV supports one of the two largest occurrences known to exist and is distributed within the second largest expanse of Monterey pine forest known to support *P. yadonii*. However, the Service determined the area did not have the features that are essential to the conservation of the species. We determined the quantity and spatial characteristics of habitat needed for conservation, and this area was determined not to meet the definition of critical habitat. Please also see our response to Comment 1.

16. *Comment:* One commenter asked if Subunits 3b and 3c were verified to support *Piperia yadonii*.

Our Response: According to data supplied by the California Department of Transportation (Caltrans) during the preparation of the proposed rule (Robison 2006), populations of *Piperia yadonii* in Subunits 3b and 3c were visited while in flower and were verified to support the species.

17. *Comment:* One commenter provided observations of habitat and population conditions of *Piperia yadonii* in and around Subunit 3a and suggested the designation be expanded to include a site near Subunit 3a that may contain many more *P. yadonii* than previously documented. The commenter stated that the planning process for the parcel where the population occurs did not appear to involve adequate surveys for *P. yadonii,* because the surveys were conducted during the fall. The commenter provided suggestions for protecting this site.

Our Response: We appreciate the technical information supplied and have incorporated it into the discussion of Subunit 3a, where appropriate. The population in question near Subunit 3a should be surveyed to get a positive identification of the *Piperia* species occurring there. Because we cannot determine at this time that the area meets the definition of critical habitat, we are not designating it in this final rule. The process of designating critical habitat does not involve the creation of preserves or management strategies; however, we frequently provide conservation recommendations to local agencies, and work with Federal

agencies through the section 7 consultation process, as we promote recovery of listed species. We will consider the technical information and suggestions provided by the commenter in planning and implementing recovery for this species.

Comments Related to the Draft Economic Analysis

18. *Comment:* The Draft Economic Analysis (DEA) fails to present a baseline that describes the conditions that would exist in the absence of critical habitat designation. Specifically, NPCC commented that the DEA estimated a large portion of the costs would be incurred by the Pebble Beach Company (PBC), but PBC would incur these costs with or without designation. While the DEA ''directly attributed'' PBC's costs of invasive species control to designation, invasive species control provides many benefits, is required by CEQA, and was conducted in all areas, whether or not the species was present. Others commented that the DEA attributes delays to the designation that might be due to other sources.

Our Response: The Final Economic Analysis (FEA) includes an Appendix which describes impacts expected to result because of the designation of critical habitat. That is, the Appendix presents the incremental impacts that would not be expected to occur in the absence of critical habitat. This appendix recognizes that most of the impacts quantified as coextensive impacts in the report are expected to occur regardless of the designation of critical habitat.

19. *Comment:* The DEA makes no attempt to estimate how many projects or actions would involve a Federal nexus in the 20-year analysis and that the FEA should base estimates on such a prediction.

Our Response: Appendix A of the FEA identifies projects that involve a Federal nexus to estimate the incremental impacts of the designation apart from the coextensive impacts quantified in the DEA.

20. *Comment:* It is unlikely that the restriction on development in unit 2b is due to the proposed rule. It is also unlikely that the development in unit 2b would have been completely prevented.

Our Response: The DEA does not attribute these impacts from lost development to the proposed rule, but describes them as impacts ''coextensive'' with the designation of critical habitat. The FEA includes an Appendix describing incremental impacts. As described in Appendix A, the foregone development impacts in unit 2 are not considered to be incremental impacts of the critical habitat designation. Further, in the specific case of the proposed development in unit 2b, the FEA omits most of the impact from lost development that was originally included in the DEA, as information suggests it is unlikely that the entity will be prevented from developing.

21. *Comment:* To estimate the cost of delay, the DEA solely relies on conversations with the developer and uses an interest rate of fifteen percent without explanation.

Our Response: The DEA relied as much as possible on the County Planning and Building Department to determine what development had occurred in the past, what development was currently under review, and what development was planned for the future. The developer provided reasonable estimates of delay time. An interest rate of fifteen percent is a standard interest rate used to calculate the risk adjusted cost of capital to private developers.

22. *Comment:* The DEA estimates on page 34 and 44 costs to PBC of as much as $4.5 million associated with invasive species control. Commenter states that it is unclear how the overall $4.5 million figure was determined.

Our Response: The DEA does not include any estimated impacts of $4.5 million as described. Total impacts to the PBC over 20 years in undiscounted dollars of invasive species removal efforts is estimated to be $0.97 million in units 4 and 5 (see page 34 of the DEA) and $2.87 million in unit 6 (see page 44 of the DEA). As cited in footnotes 92 and 104 of the DEA, impacts to the PBC are based on annual budget estimates provided by PBC.

23. *Comment:* Commenter states that the DEA does not evaluate the evidence the Stevenson School provided on the large adverse impacts to the School. The commenter also noted that DEA does not comply with the Regulatory Flexibility Act (RFA) or Small Business Regulatory Fairness Act (SBREFA) as it does not adequately analyze the impacts to the Stevenson School.

Our Response: The FEA incorporates the previous comments made by the Stevenson School and evaluates impacts of piperia conservation on the School. Section V.F of the FEA estimates impacts to range from $0.006 million to $9.2 million (present value, three percent discount rate) as a result of possible restrictions on the implementation of the School's Master Plan. The FEA also considers the impacts to the Stevenson School in the RFA and SBREFA.

Comments from the State

24. *Comment:* The California Coastal Commission questioned why the critical habitat designation on the Monterey Peninsula did not include any areas proposed for development by the Pebble Beach Company, including that part of the Monterey pine forest that supports roughly one-third of the known population of *Piperia yadonii* and is proposed for a golf course. The Coastal Commission noted that the Service provided no biological justification for the absence of this area in the designation. They recommended that the critical habitat be redrawn to include Monterey pine forest areas on the Monterey Peninsula that support *P. yadonii* and its habitat.

Our Response: During the process of selecting critical habitat boundaries, we determined the PCEs for the species, and identified the quantity and spatial characteristics of PCEs needed for conservation. These are the physical and biological features essential to the conservation of the species. In determining the appropriate spatial arrangement of PCEs, we identified areas where there were conflicts with development projects and assessed the likelihood of the species' persistence and recovery absent designation of those areas. We determined that there was sufficient habitat for the species conservation without these lands. Therefore, our critical habitat designation does not include Pebble Beach Company development lands.

We used a multi-step process to identify and delineate critical habitat units. First, we reviewed and mapped all known occurrences of *Piperia yadonii,* using the best available information. Next, we determined the physical and biological features essential to the conservation of the species. To do this we defined the PCEs and then determined which areas contain PCEs that are essential to the conservation of the species. We evaluated which occupied areas were most likely to contribute to the long-term persistence of the species. We focused on locations with larger occurrences in larger areas of contiguous native habitat (greater than 5 acres (2 ha), see below) that are more likely to support intact ecosystem processes and biotic assemblages, provide areas for population growth, and opportunities for colonization of adjacent areas. We then selected sites with the PCEs that: (a) Represented the geographic range of the species; (b) captured peripheral populations; (c) included the range of plant communities and soil types in which *P.*

yadonii is found; (d) encompassed the elevation range over which the species occurs; and (e) maintained the connectivity of occurrences that grow on continuous ridgelines. From these areas we selected populations are most likely to persist into the future and to contribute to the species' survival and recovery. Other areas that we determined to have the PCEs, that were not included in the proposed designation or this final designation, did not have the features that are essential to the conservation of the species. For more information on how critical habitat was determined, see Criteria Used To Identify Critical Habitat section, below.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for *Piperia yadonii,* we reviewed and considered comments from the public and peer reviewers on the proposed designation of critical habitat published on October 18, 2006 (71 FR 61546), and public comments on the draft economic analysis published on August 7, 2007 (72 FR 44069). As a result of comments received on the proposed rule and the DEA, and a reevaluation of the proposed critical habitat boundaries, we made changes to our proposed designation, as follows:

(1) Based on exclusions under section 4(b)(2) of the Act, we reduced the size of several subunits of Unit 6 on the Monterey Peninsula and both subunits of Unit 4 (Aguajito) as discussed in responses to Comments 12 and 13 and in recognition of the development of a conservation agreement signed by the Service and the Pebble Beach Company. Collectively, this resulted in a reduction of Unit 6 from 1,059 acres (428 ha) to 920 acres (372 ha) and Unit 4 from 157 acres (63.5 ha) to 108 acres (43.7 ha). The acreages of the changes are provided in Table 2. We also excluded the Stevenson School for economic reasons. Further discussion of the conservation agreement and exclusions under the Act can be found later in this document starting with the section *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act*.

(2) We added the names of parcels of land, where available, to the unit descriptions, to help readers understand the boundaries of the designation, given the rather low resolution of the maps. We added technical information, as discussed in the comments, to the descriptions of Unit 3.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, habitat within the geographical area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Unoccupied areas can be designated as critical habitat. However, we will designate unoccupied areas only when the best available scientific data demonstrate that the conservation needs of the species require additional areas.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, the Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations of *Piperia yadonii*, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information

available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain features that are essential to the conservation of *Piperia yadonii*. This includes information from the final listing rule; data from research and survey observations published in peer-reviewed articles; reports and survey forms prepared for Federal, State, and local agencies, and private corporations; site visits; regional Geographic Information System (GIS) layers, including soil and species coverages; and data submitted to the CNDDB. We have also reviewed available information that pertains to the ecology, life history, and habitat requirements of this species. This material included information and data in peer-reviewed articles, reports of monitoring and habitat characterizations, reports submitted during section 7 consultations, the recovery plan for *P. yadonii*, and information received from local species experts. We did not designate as critical habitat any areas outside the geographical area occupied by the species at the time of listing.

The range of *Piperia yadonii* extends through Monterey County from the Las Lomas area near the Santa Cruz County border in the north to approximately 15 miles (25 kilometers) south of the Monterey Peninsula near Palo Colorado Canyon (Morgan and Ackerman 1990, 208–210; Allen 1996, unpaginated). This range has been divided into the following five geographic areas for the purposes of recovery planning efforts: (1) The Monterey Peninsula; (2) the area interior of the Monterey Peninsula; (3) northern Monterey County-Prunedale-Elkhorn; (4) the Point Lobos Ranch area; and (5) the Palo Colorado Canyon area (USFWS 2004, pp. 16–26, 50–52). We make reference to these geographic areas when describing the locations of *P. yadonii* populations and lands in this critical habitat designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical or biological features (PCEs) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations or protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for *Piperia yadonii* are derived from the biological needs of *P. yadonii* as described in the Background section of the proposed rule and below.

Space for Individual and Population Growth, Including Sites for Seed Dispersal and Germination

Piperia yadonii depends on adequate space for growth, reproduction between near and far neighbors, and for movement of seeds via wind to unoccupied microsites within populations, to population boundaries, and to new sites. Once dispersed, seeds must settle into sites with characteristics appropriate for germination, including the presence of fungal associates necessary for post-germination development. Maritime chaparral and pine forest communities in which *P. yadonii* and its fungal symbionts occur, exhibit considerable variability in vegetation density, species composition, and unvegetated gaps such that microsites appropriate for germination and growth are distributed unevenly throughout this mosaic.

Plant communities such as maritime chaparral, Monterey pine forest, and coast live oak woodland are dynamic; in the absence of fire, maritime chaparral succeeds to oak woodland in mesic sites and to low-diversity stands of large old-age manzanitas in drier sites (Van Dyke et al. 2001). The patchy distribution of *P. yadonii* in a given forest or chaparral site in a single year is a reflection of the habitat conditions at that particular time. Habitat sites that contain the same soil characteristics and plant community may become suitable and occupied in future decades as vegetation structure changes due to shrub or tree death and growth or herbivore population sizes or movements. In the same manner, a currently occupied location may diminish in value due to these changing conditions. The mosaic of vegetation height, density, and species composition in a given area provides opportunities for gene flow between occurrences of *P. yadonii* through seed dispersal on prevailing winds, and promotes continuation of ecosystem processes, such as the biological interactions necessary to maintain forest canopy and dominant manzanita species, and pollinator assemblages.

Maintaining large and small populations of *Piperia yadonii* is essential for the long-term conservation of the species. Large occurrences of plants and those with higher densities of individuals are more likely to attract insect pollinators necessary for the production of viable seed and promote gene flow (Kunin 1997, p. 232–233) and withstand periodic extreme environmental stresses (e.g., drought, disease), and may act as important ''source'' populations to allow recolonization of surrounding areas following periodic extreme environmental stresses. Small populations of plants may serve as corridors for gene flow between larger populations, and may harbor greater levels of genetic diversity than predicted for their size (Lesica and Allendorf 1995, pp. 172–175).

Nutritional and Physiological Requirements, Including Light and Soil Requirements

Piperia yadonii occurs in maritime chaparral, a coastal shrub association dominated by endemic species of manzanitas. It is most often found on ridges where exposed sandstone or decomposed granitic soils are shallow and where the dominant manzanita species are low-growing (preliminary measurements indicate an average of 6 inches (15 centimeters) tall (Graff 2006, pp. 5–6)), allowing *P. yadonii* leaves to receive filtered sun and the inflorescence to extend above the decumbent manzanita branches. In the Elkhorn–Prunedale area, the transition from the low-growing manzanitas of the ridgetops to the surrounding slopes that support deeper soils and higher vegetation canopies is often abrupt (Van Dyke *et al.* 2001, p. 222).

Although *Piperia yadonii* grows among manzanitas, the specific manzanita species vary among the geographic areas within the species range. Hooker's manzanita (*Arctostyphylos hookeri* ssp. *hookeri*) is the manzanita species with which *P. yadonii* most commonly grows at its most northern distribution in the hills around Prunedale. Pajaro manzanita (*A. pajaroensis*) and chamise (*Adenostoma fasciculatum*) are other dominant shrubs in maritime chaparral there. On and south of the Monterey Peninsula, several manzanitas (*A. hookeri, A. tomentosa*, and *A. glandulosa* ssp. *zacaensis*) are reportedly the dominant shrubs among which it grows (Graff 2006, p. 4; EcoSystems West 2006, p. 64). Other species of manzanita (*A. glandulosa*) and manzanita hybrids are

the dominant low-growing forms at the southernmost occurrence of *P. yadonii* near Palo Colorado Canyon, where Hooker's manzanita is absent (Norman 1995, Graff 2006, p. 4).

In Monterey pine forest, *Piperia yadonii* grows through pine needle duff where the native herbaceous vegetation cover is typically sparse, but diverse, and the Monterey pine canopy is of moderate density (20 to 70 percent on the Monterey Peninsula), providing filtered sunlight to the forest floor (EcoSystems West 2006, pp. 43, 62–68). The understory plant species most frequently associated with *P. yadonii* in the Monterey pine forest are the perennial herb common sanicle (*Sanicula laciniata*), leafy bent grass (*Agrostis pallens*), and spindly forms of bush monkey flower (*Mimulus aurantiacus*). In a habitat characterization of *P. yadonii* on the Monterey Peninsula, microsites occupied by *P. yadonii* had five times greater cover by other native geophytes (perennial plants with underground storage organs, such as bulbs, tubers, or corms), such as golden brodiaea (*Tritelia ixiodes*), blue dicks (*Dichelostemma capitatum*), and mariposa lilies (*Calochortus* spp.) than did microsites lacking *P. yadonii*. Where a maritime chaparral understory exists with scattered pines, *P. yadonii* occurs with other native herbs in gaps between the shrubs. It occurs in similar gaps associated with trails and fire roads in the Bishop pine-Gowen cypress forest stand within the Monterey pine forest on the Monterey Peninsula. It is not typically found in areas with a coast live oak canopy or those with high understory cover of shrubs or vines (EcoSystems West 2006, pp. 50–51, 62–68).

It is likely that in some areas the composition and cover of the Monterey pine herbaceous understory may remain relatively stable for decades due to abiotic factors (e.g., soils, hydrology); in others, these appropriate microhabitats may be ephemeral, disappearing as shrubs establish or increase in size and appearing elsewhere when understory fire; burrowing, trailing, and browsing animals; or shrub death, create new gaps. Areas should be of sufficient size to sustain the plant communities in which *Piperia yadonii* grows, given that climate change may eventually alter forest composition (and thus availability of filtered sunlight), available soil moisture, and mycorrhizal associates (Perry *et al.* 1990, pp. 266–274; Field *et al.* 1999, pp. 1–3; Noss 2001, pp. 581–586).

Although soils supporting native mycorrhizal symbionts are believed to be a requirement for successful growth in *Piperia yadonii*, this is not a habitat feature easily observable in the field or about which we have specific information. Therefore, we have not included it as a primary constituent element for *P. yadonii*, but assume that mycorrhizal associates will be represented in areas that encompass appropriate vegetation and soils.

Piperia yadonii occupies soils that are primarily characterized as sands, fine sands, and sandy loams by the Soil Conservation Service mapping (United States Department of Agriculture (USDA) 1978, maps; EcoSystems West 2006, pp. 23–26). Soils where *P. yadonii* occurs in the Monterey pine forest are typically characterized as sands, rather than loams and, on the Monterey Peninsula, are frequently underlain by a claypan that is 1 to 5 feet (0.3 to 1.5 m) below the surface (USDA 1978, pp. 53–54; Jones and Stokes Associates 1994b, pp. 16–21; EcoSystems West 2006, pp. 23–26)). In a comparison of Monterey pine forest sites on and east of the Monterey Peninsula, *P. yadonii* was present in soils that tended to have lower organic matter, lower nutrient levels, and lower summer soil moisture levels than areas where it was absent (EcoSystems West 2006, pp. 43, 59–61). It is not known if *P. yadonii* actually prefers nutrient-poor soils or if it is unable to compete with the denser understory vegetation found on more nutrient-rich soils. The presence of *P. yadonii* is correlated with the drier of the forest soils. It is not found in riparian areas or wetlands on the Monterey Peninsula (Allen, unpaginated; EcoSystems West 2006, pp. 59–61, 64–65).

In the maritime chaparral at its northern distributional limit, *Piperia yadonii* occurs on ridges supporting shallow, weathered, sandy soils with sandstone outcrops, where shrubs are small-statured (USDA 1978, pp. 10–11; Allen 1996 unpaginated; Graff 2006, p. 4). The average shrub canopy height in areas where *P. yadonii* occurs on these ridges is about 6 inches, according to preliminary sampling (Graff 2006, pp 5–6). Soils in this region are typically derived from weathered marine deposits. These sites often support cryptogamic soil crusts (soil surface communities primarily composed of cyanobacteria, lichens, mosses, and algae) (Graff 2006, p. 4). Cryptogamic crusts have been found to increase nutrient availability to plants, reduce erosion, improve plant-water relations, and provide germination and seedling growth sites (USDA 1997, pp. 8–11).

Pollinators

Piperia yadonii also requires pollinators for the production of viable seeds (PCE 2) (Doak and Graff 2001, p. 15). Size and configuration of plant populations, and associated flowering species, may influence the degree to which pollinators are attracted to an area (Sipes and Tepedino 1995, p. 937). The abundance of pollinators may affect reproductive success and persistence of small plant populations (Groom 1998, pp. 487–495). As a group, the reproductive output of orchids is limited by pollinator availability or activity (Tremblay *et al.* 2005, p. 24), and *P. yadonii* had reduced seed set under natural pollination as compared to manual pollination (Doak and Graff 2001, p. 12–13), an indication that seed set in this species may be pollinator limited. When populations of flowering individuals are small or flowering is restricted to a specific season, the individual plant population may not be able to sustain a population of insect pollinators by itself (Groom 1998, pp. 493–495); therefore, habitats that support a variety of other flowering plant species that provide nectar and pollen sources throughout spring and summer for pollinator populations are likely needed to sustain *P. yadonii* populations.

Doak and Graff (2001, p. 13) found that pollinators of *Piperia yadonii* are predominantly nocturnal, short-tongued moths (e.g., in the families Pyralidae, Geometridae, Noctuidae, Pterophoridae) that are most active between the hours of 8:30 p.m. and 10:00 p.m. Some of these pollinator species (e.g., *Agrotis ipsilon, Udea profundalis*) are generalists regarding larval host plants, but others (e.g., *Elpiste marcescaria, Drepanulatrix baueraia*) feed on specific host plants in the larval stage (e.g., coyote bush, wild lilac, respectively). *Piperia yadonii* exists within several plant communities that sustain insect pollinators. They do so by supporting those flowering plant species needed by pollinators as larval hosts or nectar sources (e.g., coyotebush, wild lilac, and species in the mint family).

Primary Constituent Elements for Piperia yadonii

Pursuant to our regulations, we are required to identify the known physical or biological features (Primary Constituent Elements; PCEs, laid out in sufficient quantity and appropriate spatial arrangement for conservation) essential to the conservation of *Piperia yadonii*. All areas being designated as critical habitat for *P. yadonii* are occupied, within the species' historic

geographic range, and contain sufficient PCEs to support life history functions for this species.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the *Piperia yadonii* PCEs are:

1. A vegetation structure providing filtered sunlight on sandy soils:

a. Coastal pine forest (primarily Monterey pine) with a canopy cover of 20 to 70 percent, and a sparse herbaceous understory on Baywood sands, Narlon loamy fine sands, Sheridan coarse sandy loams, Tangair fine sands, Santa Lucia shaly clay loams and Chamise shaley clay loams underlain by a hardpan; or

b. Maritime chaparral ridges with dwarfed shrubs (primarily Hooker's manzanita) on Reliz shaly clay loams, Sheridan sandy loams, Narlon sandy loams, Arnold loamy sands and soils in the Junipero–Sur complex, Rock Outcrop–Xerorthents Association, and Arnold–Santa Ynez complex often underlain by rock outcroppings.

2. Presence of nocturnal, short-tongued moths in the families Pyralidae, Geometridae, Noctuidae, and Pterophoridae.

This designation is designed for the conservation of areas supporting the PCEs necessary to support the life history functions that were the basis for the proposal. In general, critical habitat units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Each area designated in this rule has been determined to contain sufficient PCEs to provide for one or more of the life history functions of *P. yadonii*. Because not all life history functions require all the PCEs, not all critical habitat will uniformly contain all the PCEs.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available in determining areas that contain features that are essential to the conservation of *Piperia yadonii*. This includes information from the final listing rule; data from research and survey observations published in peer-reviewed articles; reports and survey forms prepared for Federal, State, and local agencies, and private corporations; site visits; regional Geographic Information System (GIS) layers, including soil and species coverages; and data submitted to the California Natural Diversity Database (CNDDB). We are not designating as critical habitat any areas outside the geographical area presently occupied by the species.

We have also reviewed available information that pertains to the ecology, life history, and habitat requirements of this species. This material included information and data in peer-reviewed articles, reports of monitoring and habitat characterizations, reports submitted during section 7 consultations, our recovery plan, and information received from local species experts.

We are designating critical habitat on lands within the geographic area occupied by the species at the time of listing that continues to be occupied to date. All critical habitat units contain habitat with features essential to the conservation of *Piperia yadonii*. We did not designate any units that are unoccupied.

We used a multi-step process to identify and delineate critical habitat units. First, we mapped and reviewed all known occurrences of *Piperia yadonii*, using the best available information. To be meaningful for the purposes of determining critical habitat units, survey information had to be evaluated in light of the species' life history. Not all individuals produce leaves or flower every year. A below-ground *P. yadonii* tuber can do one of four things in any given year: Die, remain dormant, send up leaves but not flower, or leaf out and flower (Graff 2006, pp. 7 and 8). The length of tuber dormancy is not known, but may be from 1 to 4 years based upon data from other orchid species with a similar life history. The *P. yadonii* flower is diagnostic (with regard to other *Piperia* species), and the proportion of vegetative plants that flower in any given year has been estimated to be from 0.4 percent to 22 percent (Graff 2006, p. 8), with the lowest estimates coming from those in the chaparral community. Thus it is difficult to precisely determine the extent and abundance of the species both within individual occurrences and throughout its geographic range. Because a positive identification requires a flowering individual, we did not include any occurrences in the designation that had not been identified during the flowering season as *P. yadonii*.

Occurrence information included the results of several different types of surveys for the species in various locations within its range. Allen (1996, unpaginated) conducted a two-consecutive-year survey to better understand the extent of the range, distribution, and overall population size of the species. The Allen (1996) study estimated populations of *Piperia yadonii* within polygons overlaid on topographic maps, but did not indicate areas where the author looked for, but did not find occurrences. Graff (2006, e.g., pp. 14 and 15) developed a long-term monitoring program for *P. yadonii*, using specific test plots in several areas featuring known occurrences, and georeferenced individual patches of *P. yadonii*. Various other surveys were designed and conducted for specific purposes, including assessing potential land subdivisions/development projects and potential State highway realignment. In the case of Pebble Beach Company lands on the Monterey Peninsula and areas inland from the peninsula, intensive surveys have been conducted in multiple years to aid in formulating their Del Monte Forest Preservation and Development Plan.

Next, we evaluated which occupied areas were most likely to contribute to the long-term persistence of the species. We focused on locations with larger occurrences in larger areas of contiguous native habitat (greater than 5 acres (2 ha), see below) that are more likely to support intact ecosystem processes and biotic assemblages, provide areas for population growth, and opportunities for colonization of adjacent areas. These areas also have the highest likelihood of persisting through the environmental extremes that characterize California's climate and of retaining the genetic variability to withstand future introduced stressors (e.g., new diseases, pathogens, or climate change). We believe that areas less than 5 acres in size that are surrounded by high-density development (e.g., office parks, residential neighborhoods, commercial buildings, and parking lots) and have become isolated as a result of development may contribute to the conservation of the species through educational, research, and other mechanisms, but overall have a lower potential for long-term preservation and lesser conservation value to the species. Therefore, we do not believe these areas have the features essential to the conservation of the species and thus we did not further consider these areas in the designation. Although we have not included these areas within the critical habitat designation, because they are occupied they may still receive protection under other provisions of the Act.

We then selected sites from among the data set resulting from the above evaluation that contain the features essential to the conservation of Piperia yadonii, and may require special management considerations or

protection. These areas result in a designation that: (a) Represents the geographic range of the species; (b) captures peripheral populations; (c) includes the range of plant communities and soil types in which *P. yadonii* is found; (d) encompasses the elevation range over which the species occurs; and (e) maintains the connectivity of occurrences that grow on continuous ridgelines.

Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Soule and Simberloff 1986; Scott *et al.* 2001, pp.1297–1300); therefore, essential habitat should include multiple locations across the entire range of the species to prevent range collapse. Protecting peripheral or isolated populations is highly desirable because they may contain genetic variation not found in core populations. The genetic variation results from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt, pp. 291–295). We also sought to include the range of plant communities, soil types, and elevational gradients in which *Piperia yadonii* is found to preserve the genetic variation that may result from adaptation to local environmental conditions, as documented in other plant species (e.g., see Hamrick and Godt pp. 299–301; Millar and Libby 1991 pp. 150, 152–155). Finally, habitat fragmentation can result in loss of genetic variation (Young *et al.* 1996, pp. 413–417); therefore, we sought to maintain connectivity between patches of plants distributed along ridgetops.

In determining the extent of lands necessary to ensure the conservation and persistence of this species, we identified all areas that contain PCEs and are either already protected, managed, or otherwise unencumbered by conflicting use (e.g., undeveloped County or City parks, proposed preservation areas). These populations are most likely to persist into the future and to contribute to the species' survival and recovery. We added ownership categories to the designation in the following manner: First we included undeveloped Federal and State lands, then local agency and private lands with recognized resource conservation emphasis (e.g., lands owned by a conservation-oriented organization, undeveloped County or City parks), and finally other agency and private lands.

As a result of the above process, we did not include all occupied areas in the critical habitat designation. About 13 occurrences or parts of occurrences, beyond those in the Pebble Beach Company's proposed development areas, are known to the Service and are not included in the critical habitat designation: Two of these are in the Elkhorn–Prunedale area, 10 are on the Monterey Peninsula or interior of the Monterey Peninsula, and one is in the Point Lobos Ranch area. These occurrences were not included in the designation due to the above-discussed reasons of small size, lack of surrounding native or appropriate habitat, or because we lacked evidence that *Piperia yadonii* are extant or accurately identified in those areas.

Mapping

To map the units of critical habitat, we overlaid *Piperia yadonii* records on soil series data, topographic contours and, where available, vegetation data (e.g., maritime chaparral mapped by Van Dyke and Holl (2003)). Although *P. yadonii* occurs predominately on soils with a substantial sand component (e.g., Arnold and Narlon series), the mapped distribution of such soils extends well beyond the species' range. *Piperia yadonii* also frequently occurs in areas of relatively low relief (typically less than 30 percent slope) along ridgetops or in patches of low relief amid steeper slopes. Using digital elevation data, we mapped the distribution of *P. yadonii* relative to areas with low relief and found that topographic relief, when combined with soils and plant community data, is a more accurate predictor of the species' distribution. Therefore, as a first step, we tailored unit boundaries using geomorphologic features, vegetation data, and soil series data.

In areas dominated by maritime chaparral, such as the Elkhorn-Prunedale area, *Piperia–yadonii* occurs primarily among low-growing manzanitas on ridgelines underlain by sandstone. In areas with this geomorphic setting, we determined that digitizing the centerline of the ridgetops where *P. yadonii* occurs and adding 150 meters (492 feet) on either side of the centerline most consistently encompassed known *P. yadonii* occurrences, appropriate soils, and suitable habitat contiguous with known occurrences. The resulting 300 meter-(984 foot-) wide area encompasses the flat or gently sloping ridgetops with low-growing manzanitas and the adjacent slopes supporting maritime chaparral. These ridgetops support the *P. yadonii* occurrences, areas for population expansion, germination sites for wind-dispersed seeds, and appropriate soils. When maritime chaparral did not extend 150 meters from the centerline of the ridgetop, we used closer geographic (e.g., streams) and manmade features (e.g., roads, development boundaries, farmed land) to constrain and more accurately delineate a unit area boundary.

In areas dominated by Monterey pine forest, particularly on the Monterey Peninsula, topographic features are less distinct, and consequently less useful for mapping purposes than in the chaparral-covered hills of northern Monterey County. The Monterey Peninsula's Monterey pine and Gowen cypress-Bishop pine forest stands exist in an expanse of residential and recreational development. Additional residential and recreational development is proposed. As a consequence, on the Monterey Peninsula, we began by delineating the occurrences as defined by the most recent set of comprehensive surveys. We then encompassed the forested stands and fragments that were within existing or proposed conservation or open space areas. In two locations where forest connections still existed between forest stands, we included these to help maintain continued gene flow between *Piperia yadonii* occurrences. We also used landscape features such as streams, roads, and developed areas to delineate unit boundaries on appropriate soils.

Using the above criteria we identified eight units that contain features essential to the conservation of *Piperia yadonii:* Three units are in north Monterey County in the Elkhorn-Prunedale area; one is on the Monterey Peninsula; two units are interior from the Monterey Peninsula; one unit is at Point Lobos Ranch; and the most southerly unit is near Palo Colorado Canyon.

When determining critical habitat boundaries, we made every effort to avoid including within the boundaries of the maps contained within this rule developed areas, tilled fields, row crops, golf course turfgrass, buildings, paved areas, and other areas that lack PCEs for *Piperia yadonii*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of all such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this designation have been excluded by text in the rule and are not included in the designation as critical habitat. Therefore, Federal actions limited to these structures and underlying lands would not trigger section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the occupied areas contain the features essential to the conservation of the species that may require special management considerations or protection. Many of the known occurrences of *Piperia yadonii* are threatened by one or a combination of the following: habitat fragmentation or loss due to residential, commercial, or recreational development; competition with nonnative plants for light, space, or water; deer and rabbit herbivory; vegetation cutting for fire prevention; changes in light, space, and soil moisture availability due to loss or alteration of adjacent vegetation or forest canopy; changes in fecundity (number and viability of offspring) or genetic variability resulting from loss and fragmentation of populations or potentially low pollinator abundance or activity; disease; and trampling (PCE 1, PCE 2). In maritime chaparral associations of the Prunedale-Elkhorn region where fire has not occurred in many decades, shrub diversity appears to be declining as coast live oak or large-canopied manzanitas become dominant (Van Dyke et al. 2001, pp. 225–227). This conversion may be slow in the shallow ridgetop soils where *P. yadonii* occurs, but increasing development surrounding these ridgetops reduces the opportunity to use fire as a management tool should it be deemed necessary to maintain the open, low-canopy conditions of *P. yadonii*'s preferred habitat (PCE 1). These threats may require special management and are addressed under the critical habitat unit descriptions below.

Critical Habitat Designation

We are designating eight units as critical habitat for *Piperia yadonii*. The critical habitat areas described below constitute our best assessment currently of areas that meet the definition of critical habitat for *Piperia yadonii*. Table 1, below, identifies the approximate area exempt from critical habitat for *P. yadonii* pursuant to section 4(a)(3) of the Act. Exemptions are discussed later in this rule under the section *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act*. Table 2, below, identifies units that we reduced in size between the proposed and final rules.

TABLE 1.—APPROXIMATE AREA EXEMPT FROM CRITICAL HABITAT FOR PIPERIA YADONII PURSUANT TO SECTION 4(A)(3) OF THE ACT

Location (Unit)	Size of area meeting the definition of critical habitat (Acres/Hectares)	Size of exemption area (Acres/Hectares)
Presidio of Monterey, Monterey Peninsula	121 ac (49 ha)	121 ac (49 ha)

TABLE 2.—REDUCTIONS IN THE UNIT SIZE BY TYPE OF LAND BETWEEN THE PROPOSED AND FINAL RULE

[Only the unit that was reduced is shown. Area estimates reflect all land within critical habitat unit boundaries in ac (ha).]

Critical habitat unit and subunit	State	Local agency	Private	Total reduction
Unit 4: Aguajito	0	0	49 (20)	49 (20)
Subunit 4a	0	0	28 (11)	28 (11)
Subunit 4b	0	0	21 (9)	21 (9)
Unit 6: Monterey Peninsula	0	0	139 (57)	139 (57)
Subunit 6a	0	0	95 (38)	95 (38)
Subunit 6b	0	0	3 (1)	3 (1)
Subunit 6c	0	0	39 (16)	39 (16)
Subunit 6d	0	0	0	0
Subunit 6e	0	0	2 (1)	2 (1)
Total				189 (75)

The approximate area encompassed within each designated critical habitat unit is shown in table 3.

TABLE 3.—CRITICAL HABITAT UNITS DESIGNATED FOR PIPERIA YADONII BY TYPE OF LAND OWNERSHIP

[Area estimates reflect all land within critical habitat unit boundaries in ac (ha).]

Critical habitat unit and subunit	State	Local agency	Private		Total
			Conservation-oriented NGO	Other (private)	
Unit 1: Blohm Ranch					128 (52)
subunit 1a	0	0	72 (29)	0	72 (29)
subunit 1b	0	0	56 (23)	0	56 (23)
Unit 2: Manzanita Park					497 (201)
subunit 2a	0	0	231 (93)	0	231 (93)
subunit 2b	0	0	0	83 (34)	83 (34)
subunit 2c	0	183 (74)	0	0	183 (74)
Unit 3: Vierra Canyon					50 (20)
subunit 3a	0	0	0	17 (7)	17 (7)

TABLE 3.—CRITICAL HABITAT UNITS DESIGNATED FOR PIPERIA YADONII BY TYPE OF LAND OWNERSHIP—Continued

[Area estimates reflect all land within critical habitat unit boundaries in ac (ha).]

Critical habitat unit and subunit	State	Local agency	Private		Total
			Conservation-oriented NGO	Other (private)	
subunit 3b	12 (5)	0	0	0	12 (5)
subunit 3c	21 (8)	0	0	0	21 (8)
Unit 4: Aguajito					108 (44)
subunit 4a	0	0	0	49 (20)	49 (20)
subunit 4b	0	0	0	59 (24)	59 (24)
Unit 5: Old Capitol	0	0	0	16 (6)	16 (6)
Unit 6: Monterey Peninsula					920 (372)
subunit 6a	0	0	435 (176)	375 (152)	810 (328)
subunit 6b	0	0	0	6 (2)	6 (2)
subunit 6c	0	0	23 (9)	8 (3)	31 (13)
subunit 6d	0	0	12 (5)	0	12 (5)
subunit 6e	0	19 (8)	29 (12)	13 (5)	61 (25)
Unit 7: Point Lobos	228 (93)	0	97 (39)	0	325 (131)
Unit 8: Palo Colorado	0	0	0	73 (29)	73 (29)
Total	261 (105)	202 (81)	955 (387)	699 (283)	2117 (857)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Piperia yadonii,* below.

Unit 1: Blohm Ranch

Unit 1 consists of 128 ac (52 ha) of private lands in northern Monterey County in the Elkhorn Slough watershed. It is divided into two ridgeline subunits, separated by intervening agricultural fields. The two subunits support similar plant communities and need similar types of special management considerations or protection; therefore, we discuss them as a unit, except to define land ownership or acreage. Unit 1 was occupied at the time of listing (Service 1998) and is currently occupied. It supports one of the two largest occurrences of *Piperia yadonii* plants in the Prunedale Elkhorn area (several thousand plants (Allen 1996 unpaginated)) and the northernmost occurrences in the known range of the species. This unit contains features that are essential for the conservation of *P. yadonii*, including soils from weathered marine sediments that are classified as an Arnold Santa Ynez complex on the ridgetops and as Arnold series soils on the slopes (PCE 1). Vegetation is primarily high quality maritime chaparral, with ridgetops dominated by low-growing Hooker's manzanita. This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii.* It contains ridgetop habitat openings, between and among patches of *P. yadonii*, to allow for population expansion and for shifts in population location, should successional vegetation or other changes occur that alter microhabitat conditions. Features essential to the conservation of *P. yadonii* in this unit may require special management considerations or protection due to: the growth and spread of invasive plant species (such as jubata grass); erosion from old roadbeds or past earth-moving activities; and herbivory (PCE 1, PCE 2). Herbivory of flowering stalks was 36 percent in 1999, although predators (mountain lion (*Puma concolor*)) of herbivores were recently sighted on these lands (Doak and Graff 2001, p. 28; Graff 2006, Appendix IV). Given that pollen deposition rates and seed production were low for the one site studied in this unit, special management may also be needed to ensure that the abundance of potential pollinators, such as moths or bees, are maintained or enhanced PCE 2).

Subunit 1a: This subunit consists of 72 ac (29 ha) of private land owned by the Elkhorn Slough Foundation and The Nature Conservancy. Although restoration and removal of nonnative invasive plant populations are ongoing, a management plan specifically addressing *Piperia yadonii* on properties owned by the Elkhorn Slough Foundation and The Nature Conservancy has not yet been developed (Hayes 2006).

Subunit 1b: This subunit consists of 56 ac (23 ha) of land owned by The Nature Conservancy and managed by the Elkhorn Slough Foundation, or owned and managed by the Elkhorn Slough Foundation. A management plan specifically addressing *Piperia yadonii* has not yet been developed.

Unit 2: Manzanita Park

Unit 2 consists of 498 ac (201 ha) of Monterey County lands north of Prunedale. It is divided into 3 subunits that support similar soils and vegetation communities and need similar types of special management considerations or protection; therefore, we discuss these characteristics for the whole unit. Unit 2 was occupied at the time of listing (Service 1998) and is currently occupied. The lands in this unit support several thousand *Piperia yadonii* plants scattered along the ridges, separated by intervening lower-elevation areas of oak woodland, farmed lands, and residential development (Allen 1996 unpaginated; Environmental Science Associates 2003; CNDDB 2005; Graff 2006 appendix IV). This unit contains features that are essential for the conservation of *P. yadonii,* including soils from weathered marine sediments that are classified as an Arnold–Santa Ynez complex on the ridgetops and as Arnold series soils on the slopes and on more undulating topography within Manzanita County Park (PCE 1). Vegetation within the subunits is primarily maritime chaparral, with some coast live oak woodland at the lower elevations. The ridgetops are dominated by low-growing Hooker's manzanita. This unit contains the PCEs for *P. yadonii* that promote germination, growth, and reproduction (PCE 1). This unit encompasses a cluster of three ridgelines primarily oriented east-west that rise in elevation from west to east, which support *P. yadonii* and which may be close enough for genetic exchange via wind-dispersed seed. In conjunction with the Blohm Ranch unit (Unit 1), this unit encompasses the majority of the *P.*

yadonii plants known in the northern half of the range of *P. yadonii.* The ridgetop habitat openings, between and among patches of *P. yadonii*, allow for population expansion and for shifts in population location, should successional vegetation or other changes occur that alter microhabitat conditions. This unit is the central of the three in the Elkhorn Prunedale geographic area. This unit supports one of the two largest occurrences in the species' northern range, and the subunits of Unit 2 include the largest occupied ridgelines relatively unfragmented by residential development in the heart of the species' northern distribution. Due to their relatively unfragmented condition, lands in this unit may support dormant plants among the patches of currently known *P. yadonii.* Features in this unit may require special management considerations or protection due to: the growth and spread of invasive plant species, such as jubata grass, French broom, and eucalyptus; elimination or further fragmentation of habitat from residential, recreational, or agricultural development; vegetation removal for fuel reduction purposes; disease; and herbivory (PCE 1, PCE 2). Habitat with features essential to the conservation of *P. yadonii* in this unit may require special management considerations or protection to ensure the abundance of potential pollinators, such as moths or bees, are maintained or enhanced, to ensure the production of sufficient viable seed (PCE 2).

Subunit 2a: This subunit consists of 231 ac (93 ha) of land owned and managed by the Elkhorn Slough Foundation.

Subunit 2b: This subunit consists of 83 ac (34 ha) of private lands. Some of the lands in this subunit were proposed for a 10-lot subdivision, residential development, and open space designation in 2000 (Mercurio 2000, p. 2); this project may be moving forward in the near future (Schubert 2006).

Subunit 2c: This subunit consists of 183 ac (74 ha) within Manzanita County Park, owned and managed by the County of Monterey. Part of the park has been developed into a sports complex and is not part of the designation. A portion of the park within the unit is used for hiking and equestrian use. Although volunteers have recently begun removing nonnative invasive plants from the park, we are not aware of the existence of any management plan that specifically addresses *Piperia yadonii* on properties owned by Monterey County.

Unit 3: Vierra Canyon

Unit 3 consists of 50 ac (20 ha) consisting primarily of State lands in northern Monterey County north of Prunedale. It is divided into 3 subunits with similarities in vegetation and special management considerations or protection needs. Unit 3 was occupied at the time of listing (Service 1998) and is currently occupied (Childs 2004). The easternmost *Piperia yadonii* occurrences in unit 3 (subunits 3b and 3c) are reported to be small, with fewer than 10 flowering individuals; this likely represents up to several hundred individuals, based on the observed proportion of flowering to vegetative individuals (Doak and Graff 2001). This unit contains features that are essential for the conservation of *P. yadonii*, including the following: Lands in this unit support soils from weathered marine sediments that are classified as an Arnold-Santa Ynez complex on the ridgetops and the Arnold series on the slopes (PCE 1). Vegetation is primarily maritime chaparral, with coast live oak woodland in the lower elevation areas. The ridgetops are dominated by low-growing Hooker's manzanita. Analysis of aerial photographs suggests that chaparral vegetation on the ridgetops in this region maintains a more open canopy than in areas to the west, in the areas of Units 1 and 2 (Van Dyke 2006). Therefore, these areas may support openings that are more persistent, and can be occupied by *P. yadonii* for a longer time, than areas to the west, even in the absence of fire (Van Dyke 2006). The lands surrounding these subunits are more extensively developed for residential use than are those to the west, severing the once continuous maritime chaparral that dominated the ridges. Consequently the subunits are smaller and lack the additional habitat for population expansion found in the other northern units. This unit contains the PCEs for *P. yadonii* that promote germination, growth, and reproduction. It supports the easternmost occurrences of *P. yadonii* in the Elkhorn'Prunedale region, on the northeast periphery of the species' range. Features essential to the conservation of *P. yadonii* in this unit may require special management considerations or protection due to elimination or further fragmentation of habitat from development, grading or other vegetation removal (e.g., for fuel reduction purposes or roads), and the spread of invasive plant species (PCE 1, PCE 2).

Subunit 3a: This subunit consists of 17 ac (7 ha) of private lands that are overlain by a Pacific Gas and Electric Company easement. The occurrence in this subunit is the largest documented in Unit 3, numbering several thousand plants (Childs 2004).

Subunit 3b: This subunit consists of 12 ac (5 ha) of State lands (California Department of Transportation (Caltrans)). The lands in this subunit and in subunit 3c were part of a previous study area for a highway alignment. This alignment was eventually excluded from further consideration and the State retains the lands (Robison 2006). We are not aware of any management plan that addresses *Piperia yadonii* on these State properties.

Subunit 3c: This subunit consists of 21 ac (8 ha) of State lands, owned by Caltrans.

Unit 4: Aguajito

Unit 4 consists of 108 ac (44 ha) of private land east of the Monterey Peninsula and north of Jack's Peak County Park. It is divided into 2 subunits separated by lower elevation lands. Unit 4 was occupied at the time of listing (Service 1998) and is currently occupied. *Piperia yadonii* occurs in these subunits on ridgetops, where it grows with Hooker's manzanita (EcoSystems West 2006, p. 61). This unit contains features that are essential for the conservation of *P. yadonii*, including the following: Soils in this unit are classified as the Santa Lucia-Reliz Association, where Reliz series soils occur on the ridgetops and Santa Lucia series soils on surrounding slopes (PCE 1). Reliz series soils are characterized as excessively drained shaley clay loams underlain by shale or sandstone (USDA 1978, p. 64). The vegetation in the unit is a mix of Monterey pine forest and maritime chaparral. Griffin (1978, p. 69) commented that this area was one of the only ones in the Monterey Bay area where maritime chaparral grows on shale. He also noted that sandstones exist within the shale beds and produce sandy loam soils. A related species, *Piperia elegans*, is more abundant in the surrounding Monterey pine forest (EcoSystems West 2005b, p. 7). This unit provides habitat that supports germination, growth, and reproduction. Unit 4 represents one of only two units in the region interior to the Monterey Peninsula. It supports the largest undeveloped easternmost occurrence of *P. yadonii* in the central and southern half of the species' range. Its preservation will help avoid range collapse. Features essential to the conservation of *P. yadonii* in this unit may require special management considerations or protection due to fragmentation of habitat from

development and the colonization and spread of invasive plant species (PCE 1, PCE 2). We are also excluding 49 acres (20 ha) from this subunit as a result of the Pebble Beach Company's conservation agreement.

Subunit 4a: This subunit consists of 49 ac (20 ha) of private lands (owned by the Pebble Beach Company). Lands in and/or adjacent to this subunit and subunit 4b are proposed for preservation in the Pebble Beach Company's recent development plan, but the configuration of the preservation areas is not yet determined (Monterey County 2005, pp. 2–89, 2–90).

Subunit 4b: This subunit consists of 56 ac (24 ha) of private lands (owned by the Pebble Beach Company) and proposed for preservation (see above), and 3 ac (1ha) of Monterey County road right-of-way.

Unit 5: Old Capitol

Unit 5 consists of 16 ac (7 ha) of private land (owned by the Pebble Beach Company) east of the Monterey Peninsula. Unit 5 was occupied at the time of listing (Service 1998) and is currently occupied. Surveys in 2005 revealed that the dominant *Piperia* species at this location is *P. elegans*, which number in the thousands; however, several hundred *P. yadonii* co-occur with *P. elegans* throughout the unit (EcoSystems West 2005b, pp. 5–7). This unit contains features that are essential for the conservation of *P. yadonii*, including the Chamise shaley clay loam (PCE 1) soil type. The vegetation is Monterey pine forest and coast live oak woodland. This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii*. It is the only unit designated between the Monterey Peninsula (Unit 6) and Aguajito (Unit 4) to the east and, therefore, provides connectivity between these other two units.

Features essential to the conservation of *P. yadonii* may require special management considerations or protection in this unit due to: Fragmentation or loss of habitat from development, habitat degradation by motorized vehicles and encampments, debris dumping, and competition from nonnative invasive plants (PCE 1, PCE 2). The land in Unit 5 is proposed for preservation in the Pebble Beach Company's recent development plan (Monterey County 2005, pp. 2–89, 2–90).

Unit 6: Monterey Peninsula

Unit 6 consists of 920 ac (372 ha) of private and City lands on the Monterey Peninsula. This unit is divided into 5 subunits due to intervening development. Most of the lands surrounding this unit are developed for residential and recreational (golf) use. The similarities among the subunits in soils and vegetation community are discussed here; subunit specific details are discussed below. Unit 6 was occupied at the time of listing (Service 1998) and is currently occupied. It supports the greatest abundance and largest aerial extent of *Piperia yadonii* in the species' range, with close to 100,000 vegetative plants (Zander Associates and WWD Corporation 2004, all pp.; EcoSystems West 2004, pp. 1–9; EcoSystems West 2005a, 2005b, all pp.). This unit contains features that are essential for the conservation of *P. yadonii* including sands or sandy loam soils that belong to at least 5 soil series on the Monterey Peninsula unit (Baywood sands, Narlon loamy fine sands, Sheridan coarse sandy loams, Tangair fine sands, and Santa Lucia shaley clay loam). Vegetation in this unit is primarily Monterey pine forest, with maritime chaparral, and Bishop pine/Gowen cypress forest in two subunits (PCE 1). Pollinator observations and collections were made on lands in this unit (PCE 2) (Doak and Graff 2001). This unit provides habitat that supports germination, growth, reproduction, and space for shifts in the location of *P. yadonii*, as microhabitat conditions change. Features essential to the conservation of *P. yadonii* may require special management in this unit due to: Adverse effects from adjacent existing and future development, including the loss of adjacent forest canopy, increased trampling, potential hydrologic changes, overspray of pesticides, the introduction of pathogens or disease, mowing, and the introduction and spread of invasive plant species; continuing high and/or increasing deer populations resulting in high herbivory levels; and increased growth of understory vegetation due to exclusion of wildfire (PCE 1, PCE 2).

Subunit 6a: This subunit consists of 810 ac (328 ha) of private lands owned by the Pebble Beach Company and other private owners, including 17 ac (7 ha) owned by the Del Monte Forest Foundation (DMFF). Protected lands in this subunit include the SFB Morse Botanical Reserve (owned by the DMFF) and the Huckleberry Hill Natural Reserve (easement held by the DMFF). It also includes lands identified in the Pebble Beach Company's most recent development proposal for preservation or conservation: Areas PQR, G, H, I, the Corporate Yard Preservation Area, and Area D (Monterey County 2005). The Department of the Army's Presidio of Monterey is contiguous with the northeastern edge of this subunit; those lands are exempted from this designation, as described later in this rule. We have also excluded 54 acres (22 ha) from this subunit as a result of the Pebble Beach Company's conservation agreement and 6 ac (2.4 ha) from the Stevenson School property. We have also removed 35 acres (including Area D) because they do not support the PCEs. Please see the section *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act* and our responses to Comments 12 and 13, for a discussion of these exclusions.

Plant communities in the Huckleberry Hill Natural Area and SFB Morse Botanical Preserve are Gowen cypress/Bishop pine forest, maritime chaparral, and Monterey pine forest. The remaining lands support primarily Monterey pine forest. Lands in this subunit support about 90,000 vegetative *Piperia yadonii* plants (Zander Associates and WWD Corporation 2004 all pp.; EcoSystems West 2004, pp. 1–9; EcoSystems West 2005a, 2005b, all pp.). Although the DMFF conducts some monitoring and removal of nonnative invasive plant populations, a management plan specifically addressing *P. yadonii* on properties owned by the DMFF has not been developed.

Subunit 6b: This subunit consists of 6 ac (2 ha) of private lands. It is identified in the Pebble Beach Company's most recent development proposal as the Bristol Curve Conservation Area (Monterey County 2005 Fig. ES–2). This subunit is part of a larger area identified by the Pebble Beach Company as Area MNOUV, which supports about 116 ac (47 ha) of Monterey pine forest and one of the two largest known occurrences of *Piperia yadonii* (about 57,000 plants (Zander Associates and WWD Corporation 2004)). The Monterey pine forest of MNOUV outside the proposed Bristol Curve conservation area is proposed for development as a golf course (Monterey County 2005). Vegetation in this subunit is Monterey pine forest with an herbaceous understory. We are excluding 1 acre (1 ha) from this subunit as a result of the Pebble Beach Company's conservation agreement, and as a result of boundary adjustments, we have not included 2 acres of proposed critical habitat within this subunit that do not support the PCEs. Please see the section *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the*

Act and our responses to Comments 12 and 13, for a discussion of these exclusions.

Subunit 6c: This subunit consists of 31 ac (13 ha) of private lands, of which about 23 acres (9 ha) are owned by the DMFF. Lands within this unit are referred to as Indian Village (owned by the DMFF) and, in the Pebble Beach Company's recent development proposal, as Conservation Area K and Preservation Areas J and L (Monterey County 2005 Fig. ES–2). Adjacent lands (Part of Area K) that are proposed for development are not included in this subunit. We are excluding 37 acres (15 ha) from this subunit as a result of the Pebble Beach Company's conservation agreement, and we have removed 2 acres (1 ha) as a result of boundary adjustments to account for areas that do not support the PCEs. Please see the section *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act* and our responses to Comments 12 and 13, for a discussion of these exclusions. The vegetation in this subunit is primarily Monterey pine forest. This subunit supports several thousand Piperia yadonii plants (Zander Associates and WWD Corporation 2004). Along with subunits 6b and 6d, it encompasses lands in the westernmost region of the Monterey Peninsula.

Subunit 6d: This subunit consists of 12 ac (5 ha) of private lands owned by the DMFF. It encompasses the Crocker Grove, an area of Monterey cypress forest with some adjacent Monterey pine forest (PCE 1). This is the westernmost subunit on the peninsula, closest to the ocean, and lands it occurs on are mapped as marine terrace 2 (Jones and Stokes 1994b, p. 11). It has been documented to support about 50 flowering *Piperia yadonii* plants (Van Dyke et. al. 2006), which typically equates to several hundred vegetative plants.

Subunit 6e: This subunit consists of 42 ac (17 ha) of private lands and 19 ac (7 (ha) owned by the City of Pacific Grove. About 29 ac (12 ha) of the private lands are owned by the DMFF. Lands within this unit are referred to as the Navajo tract and as Preservation Area B in the Pebble Beach Company's most recent development proposal (Monterey County 2005 Fig. ES–2). We are excluding 2 acres (1 ha) from this subunit as a result of the Pebble Beach Company's conservation agreement. Please see the section *Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act* for a discussion of this exclusion. The vegetation in this subunit is a mix of coast live oak and Monterey pine forest (PCE 1). It is the northernmost unit we are designating on the Peninsula. It supports several hundred plants of *Piperia yadonii* (Zander Associates and WWD Corporation 2004).

Unit 7: Point Lobos Ranch

Unit 7 consists of 228 ac (92 ha) of State land south of the Monterey Peninsula on the Big Sur coast, and 97 ac (39 ha) owned by the Big Sur Land Trust that are intended to be added to the State Parks system in the future. Unit 7 was occupied at the time of listing (Service 1998) and is currently occupied. The lands in this unit support several thousand *Piperia yadonii* plants (Graff *et al.* 2003, Nedeff et al. 2003). This unit contains features that are essential for the conservation of *P. yadonii,* including the sandy loam soils in the Sheridan, Narlon, Junipero Sur complex series, underlain by granitic substrates from which terrace sands have been eroded (Griffin 1978, p. 69, USDA 1978 map no. 35). Vegetation is a composite of Monterey pine forest, maritime chaparral, Gowen cypress Bishop pine forest, with some redwood forest. *Piperia yadonii* occurs in this unit in Monterey pine forest; on exposed granitic soils in maritime chaparral dominated by Hooker's manzanita; and under a canopy of Monterey pine, Gowen cypress, and redwood (*Sequoia sempervirens*) (PCE 1). This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii,* as well as population expansion and shifts in population location. This unit supports *P. yadonii* growing on soils not found in other units and in association with a varied mix of forest tree species. This is the second highest unit in elevation and supports the largest occurrence of *P. yadonii* south of the Monterey Peninsula (Graff 2006). Features essential to the conservation of *P. yadonii* may require special management in this unit due to: the growth and spread of invasive plant species, such as French broom; loss of habitat from residential development; and erosion (PCE 1, PCE 2). Access by park visitors may need to be managed to avoid creation of trails in Monterey pine forest populations and use of herbicides should be controlled to avoid or minimize effects to *P. yadonii (PCE 1).*

Unit 8: Palo Colorado

Unit 8 consists of 73 ac (29 ha) of private land on the Big Sur coast. Unit 8 was occupied at the time of listing (Service 1998) and is currently occupied. The lands in this unit were reported to support 38 flowering *Piperia yadonii* plants (Norman 1995), which likely represents a population of several hundred to several thousand vegetative individuals, based on the observed proportions of flowering to vegetative individuals (Doak and Graff 2001). This unit contains features that are essential for the conservation of *P. yadonii* including the following: A mix of sandy loam soils, shallow soils less than 20 inches deep, and rock outcrops classified as the Junipero-Sur complex and Rock Outcrop—Xerorthents Association (PCE 1) (USDA 1978, p. 38). Vegetation in this unit has been described as a unique association of maritime chaparral, with low-growing hybrid *Arctostaphylos glandulosa* as the dominant manzanita under which *P. yadonii* occurs (Norman 1995). This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii*. This unit supports the most southern and highest elevation (1,000 to 1,400 feet (300 to 430 m)) occurrence in the species' range. Features essential to the conservation of *P. yadonii* may require special management in this unit due to habitat fragmentation and habitat degradation from road and trail grading and from future development, such as the introduction and spread of nonnative plants, removal of native vegetation, erosion, and hydrologic changes (PCE 1, PCE 2).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of adversely modify (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Pursuant to the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider species proposed for listing and critical habitat and avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the species proposed for listing or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to species proposed for listing or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Piperia yadonii* or its designated critical habitat require consultation under section 7(a)(2) of the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Adverse Modification Standard for Actions Involving Effects to the Critical Habitat of Piperia yadonii

For the reasons described in the Director's December 9, 2004, memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Piperia yadonii* is appreciably reduced. Generally, the conservation role of *Piperia yadonii* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for *Piperia yadonii* include, but are not limited to:

(1) Actions that would remove or destroy *Piperia yadonii* plants or remove flowering stalks. Such activities could include, but are not limited to, grading, plowing, mowing, burning during the growing or flowering season, driving over plants, unrestricted creation of trails through occurrences, unrestricted mechanical weed control, and/or unlimited use of herbicides.

(2) Actions that would increase the establishment and spread of invasive nonnative species in *Piperia yadonii* habitat or increase the invasability of the plant community within which *P. yadonii* occurs. Such activities could include, but are not limited to: Grading; plowing; road building and maintenance; introducing seeds or other propagules of invasive species during erosion-control practices and/or

landscaping practices; isolating habitat patches within a matrix of residential or other development; off road vehicle traffic; and/or livestock grazing. These activities could encourage the establishment and spread species such as French broom or jubata grass, which can compete with *P. yadonii* for light and other resources.

(3) Actions that would directly remove or destroy the low-growing maritime chaparral and Monterey pine forest plant communities on which *Piperia yadonii* depends. Such activities could include, but are not limited to: Road construction; grading; development; plowing; burning out-of-season or too frequently; and/or off-road vehicle traffic. These activities could reduce or eliminate space and the appropriate light and hydrologic conditions for *P. yadonii* germination, growth, and reproduction.

(4) Actions that would indirectly reduce the presence of low-growing manzanitas in maritime chaparral, openings in maritime chaparral, or forested areas with a diverse assemblage (but low cover) of native herbs. Such activities could include, but are not limited to: Those that isolate or fragment habitat through development; road construction that promotes such development; exclusion of fire; reduced opportunity for prescribed burns during the fall season; and/or increased potential for human-caused fire during the growing season of *Piperia yadonii*. These activities could result in less diverse, consistently old-age maritime chaparral stands with fewer openings or areas that support low-growing manzanitas and reduced abundance of forest patches with filtered light canopies and low cover by vines and shrubs.

(5) Actions that would alter the soil hydrology in *Piperia yadonii* habitat. Such activities could include, but are not limited to: Grading or excavation that disrupts subsurface hardpan layers that influence soil saturation; conversion to agricultural lands; development of golf courses, ball fields, or other areas that require irrigation; and/or development that increases impermeable surfaces. These activities could result in soils that do not retain sufficient moisture through the growing season, excessive irrigation that influences *P. yadonii* through altered water availability or indirectly through changes in associated vegetation, and changes in drainage patterns that influence soil saturation during the growing season.

(6) Actions that would increase the abundance of herbivores (such as deer and rabbits) of *Piperia yadonii* leaves and flowers or encourage the spread and abundance of nonnative species that consume pollen (e.g., nonnative earwigs). Such activities could include, but are not limited to: Residential or commercial development that introduces landscaping that favors nonnative garden invertebrates but not their predators (e.g., lizards); and/or fencing that excludes predators, but not herbivores. These actions could result in increased levels of herbivory of *P. yadonii* leaves and flowers and correspondingly reduced levels of reproduction.

(7) Actions that would diminish the variety or abundance of pollinators needed for seed set in *Piperia yadonii*. Such actions could include, but are not limited to: Removal of the native maritime chaparral and forest plant communities within which *P. yadonii* grows, night-lighting adjacent to areas supporting *P. yadonii*, and/or unlimited pesticide applications. These actions could indirectly reduce reproduction in *P. yadonii* through reduced pollen transfer and could alter gene flow between occurrences through changes in pollinator composition.

All of the units designated as critical habitat, as well as that portion of one which has been exempted under section 4(a)(3) of the Act contain features essential to the conservation of *Piperia yadonii*. All units are within the geographic range of the species and all units were occupied by the species at the time of listing and are occupied now. In some cases, the level of detail regarding the precise location of plants within the units was not documented until after the listing. Because all critical habitat units are occupied, Federal agencies already consult with us on activities in areas currently occupied by *P. yadonii*, or if the species may be affected by their actions, to ensure that their actions do not jeopardize the continued existence of *P. yadonii*.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 4(a)(3)

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. INRMPs developed by military installations located within the range of the critical habitat designation for *Piperia yadonii* were analyzed for exemption under the authority of 4(a)(3) of the Act.

Approved INRMPs

The Presidio of Monterey (POM) has an INRMP and Endangered Species Management Plan (ESMP) in place that provides a benefit for *Piperia yadonii*. The ESMP and INRMP were completed, and the Army began implementing each of them, in 1999 and 2001, respectively (Harding ESE 1999; Harding ESE 2001; Cairns 2006). The conservation goal of the ESMP that addresses *P. yadonii* is to maintain the two occurrences on POM lands and protect them from impacts during use of the nearby obstacle/orienteering course. The plan identifies the following actions that will benefit *P. yadonii*: Monitoring; protecting the populations from foot traffic by installing signs and by other means; removing nonnative plant species from documented and potential habitat; monitoring deer browsing and providing caging, if necessary; and establishing a propagation program, if necessary. The

POM has carried out the following in the past 5 years: Annual population monitoring since 2000, installation and maintenance of educational signs, creation of an educational brochure highlighting *P. yadonii*, construction and installation of outdoor bulletin boards on which the brochures are posted, and removal of infestations of nonnative French broom in over 13 acres of Monterey pine forest habitat (Cairns 2006).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the ESMP and INRMP will provide benefits to *Piperia yadonii* occurring in habitats within the POM. Therefore, this installation is exempt from critical habitat designation under section 4(a)(3) of the Act. Approximately 121 acres (49 ha) of habitat for *P. yadonii* is not included in this critical habitat designation due to this exemption.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Congressional record is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

Benefits of Designating Critical Habitat

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Regulatory Benefits

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Prior to the designation of critical habitat, consultation for a listed species occurs on actions that may affect the listed species, and Federal agencies must refrain from undertaking actions that jeopardize the continued existence of the species. Thus the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis looks on the action's impact to survival and recovery of the species and the adverse modification analysis looks at the effects to the designated habitat's contribution to conservation of the species. This will, in many instances, lead to different results, and different regulatory requirements.

We note that, for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service essentially conflated the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affect occupied critical habitat. The Court ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, critical habitat designations may provide greater benefits to the recovery of a species.

There are two limitations to the regulatory effect of critical habitat. First, consultation is only required where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7(a)(2) of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat. For critical habitat, a biological opinion that reaches a ''no destruction or adverse modification'' determination may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements.

We believe that in many instances the regulatory benefit of critical habitat is low when compared to voluntary conservation efforts or management plans. The conservation achieved through implementing Habitat Conservation Plans (HCPs) under Section 10 of the Act or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, an HCP or management plan that incorporates enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Educational Benefits

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential

conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Piperia yadonii*. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second benefit: That the designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Recovery Benefits

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species which may require special management considerations or protection. In identifying those lands, the Service must consider the recovery needs of the species, such that the habitat that is identified, if managed, could provide for the survival and recovery of the species. Furthermore, once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's *Gifford Pinchot* decision, the Court ruled that the jeopardy and adverse modification standards are distinct, and that adverse modification evaluations require consideration of impacts to the recovery of species. Thus, through the section 7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not destroy or adversely modify designated critical habitat.

It is beneficial to identify those lands that are necessary for the conservation of the species and that, if managed appropriately, would further recovery measures for the species. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine lands essential for conservation as well as identify the primary constituent elements or features essential for conservation on those lands. The designation process includes peer review and public comment on the identified features and lands. This process is valuable to landowners and managers in developing conservation management plans for identified lands, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

However, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, management plans institute proactive actions over the lands they encompass intentionally to remove or reduce known threats to a species or its habitat and, therefore, implement recovery actions. We believe that the conservation of a species and its habitat that could be achieved through the designation of critical habitat, in some cases, is less than the conservation that could be achieved through the implementation of a management plan that includes species-specific provisions and considers enhancement or recovery of listed species as the management standard over the same lands. Consequently, implementation of any HCP or management plan that considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995, p. 2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648). According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 2; Brook *et al.*

2003, pp. 1644–1648). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). The Service believes that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by partnerships or voluntary conservation efforts can often be high.

Benefits of Excluding Lands With HCPs or Other Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine these conservation efforts and partnerships designed to proactively protect species to ensure that listing under the Act will not be necessary. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Exclusions Under Section 4(b)(2) of the Act

After consideration under section 4(b)(2) of the Act, we are proposing to exclude the following areas of habitat from the critical habitat designation for *Piperia yadonii*: 49 acres in Unit 4 and 100 acres in Unit 6. There are two exclusions: One for areas proposed for development under a conservation agreement with Pebble Beach Company, and the other for an area owned by the Stevenson School.

The Pebble Beach Company has submitted a conservation agreement for its lands that are within *P. yadonii* critical habitat units on the Monterey Peninsula (Unit 6), and interior to the Monterey Peninsula (Unit 4 and Unit 5). We have considered this conservation strategy in our designation and have excluded from critical habitat approximately 143 ac (58 ha) we had proposed for critical habitat that are currently owned and managed by the Pebble Beach Company in subunits 4a, 4b, 6a, 6b, 6c, and 6e. We are also excluding from the designation approximately 6 ac (2 ha) owned by Stevenson School on the Monterey Peninsula. We believe that these areas are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs below.

Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act

Pebble Beach Company Lands

A Memorandum of Understanding between the Service and the Pebble Beach Company serves as the conservation agreement addressing *Piperia yadonii* on Pebble Beach Company (Company) lands. It identifies different management strategies and conservation benefits to *P. yadonii*, depending on whether or not the Company receives government approvals for their proposed development project. The conservation agreement essentially summarizes and commits the Company to the preservation, management, avoidance, minimization, and enhancement measures for *P. yadonii* in the Company's Del Monte Forest Preservation and Development Plan (DMF/PDP) and the additional mitigations included by the County of Monterey in the 2005 FEIR (Monterey County 2005), providing that the Company receives local, State, and Federal government agency approvals for the development portion of their proposed project. Almost all of the Company lands in the Del Monte Forest (Subunits 6a, 6b, 6c, and 6e), and Old Capitol (Unit 5), that were proposed as critical habitat were required to be conserved as mitigation for development in that planning process. With these approvals, the conservation agreement would provide a benefit to *P. yadonii* that is beyond that of the FEIR-defined project, in that it includes the Company's commitment to preserve and manage lands identified in the conservation agreement in perpetuity, superseding the provision described in the FEIR that requires the County Supervisors to decide on the need for continued management after 20 years of implementation (Monterey County 2005 (PRDEIR), p. P2–19). By including this requirement, the conservation agreement recognizes that management activities, such as control of nonnative species and recreational access, should occur in perpetuity, given that the effects of surrounding development occur in perpetuity. The conservation agreement references the FEIR and its suite of actions designed to conserve *P. yadonii* and offset adverse effects of

proposed development on the species. They include the Company's commitment to:

a. Preserve Monterey pine forest and maritime chaparral habitat occupied by *Piperia yadonii*, in the areas identified as mitigation for Yadon's piperia in the FEIR and the County's mitigation conditions (Monterey County 2005);

b. Maintain the quality and acreage of habitat occupied by *Piperia yadonii* within the lands identified in (a), above, through resource management;

c. Reduce the loss of *Piperia yadonii* through siting and design of development project components;

d. Reduce the direct and indirect effects on extant *Piperia yadonii* adjacent to development areas, through staff education, and implementation of protective measures addressing golf course use, maintenance, and construction;

e. Salvage and transplant *Piperia yadonii* as described in the FEIR (Monterey County 2005);

f. Enhance and expand occupied habitat for *Piperia yadonii* on the lands identified in (a) above, by convening an Adaptive Management Team and developing and implementing the Piperia Plan and a program of management-oriented research and testing. The Piperia Plan would be developed by a third-party consultant, agreed to by the Service, and would describe a scientifically sound, coordinated approach to preservation, enhancement, and management of *P. yadonii* on the lands addressed in the FEIR. Following the initial County approvals, the Adaptive Management Team convened, and the Pebble Beach Company has begun funding a program of management and enhancement-oriented research for *P. yadonii*.

In June 2007, the California Coastal Commission denied approval of a Monterey County measure that was needed for the Company to secure project approvals. The eventual outcome of this process is unknown. In the absence of approvals on the current project, the Company may pursue an alternate project. The conservation agreement describes alternate actions, in the event that the Company's project does not receive government approvals. Under the conservation agreement, if they receive approvals for an alternative project that lacks an 18-hole golf course, the Company would preserve and manage at least 511 ac (207 ha) of land in the Del Monte Forest, Old Capitol and Aguajito areas, as identified in the conservation agreement exhibits. The areas the Conservation Agreement identifies for dedication include all Company lands in designated critical habitat on the Del Monte Forest (in Subunits 6a, 6b, 6c, and 6e) and at Old Capitol (Unit 5), as well as designated critical habitat at Aguajito (all of Subunit 4a and half of Subunit 4b). The conservation agreement allows some flexibility in which specific parcels of Monterey pine forest habitat will be preserved. If the Pebble Beach Company obtains approval for a future project, the company will not begin developing any area supporting *P. yadonii* until they dedicate the lands to be preserved. The conservation agreement includes no time requirement on the dedications, other than that they must occur prior to development that would adversely affect *P. yadonii*.

Under the conservation agreement, the Company has committed to manage, for the interim period until a future project approval and dedication occur, the lands they own that are designated as critical habitat and identified as future dedication areas in the agreement. They will also manage Areas N and O for the benefit of *P. yadonii*, until the development approvals are secured and the land dedication takes place. Areas N and O are part of the contiguous forested area known as MNOUV, are adjacent to Subunit 6b, and support abundant *P. yadonii*. The management actions the Company will carry out include removing nonnative species from occupied P. yadonii habitat; controlling runoff and erosion; installing and maintaining vehicle barriers to stop entrance into populations; removing debris and encampments from P. yadonii locations; and educating landowners, utility workers, and golf course personnel about practices to reduce impacts to P. yadonii. To improve the success of these and other management actions, the Company has also committed to conduct management-oriented research (not to exceed $25,000 annually), during that interim period, similar to what the Company has already begun through the Adaptive Management Team. The conservation agreement specifies that the Company will fully fund, with a written guarantee, the components of the conservation agreement if a future dedication of lands occurs.

The benefits of including lands in critical habitat can be regulatory, educational, or to aid in recovery of species as generally discussed earlier in this rule. In the case of *Piperia yadonii* on the Monterey Peninsula, there may be some Federal regulatory benefit to the designation only if a Federal action triggers a consultation under section 7 of the Act. The Federal nexus would most likely occur due to either wetland impacts in the Monterey pine forest that require a Corps permit, or via a consultation on an HCP that was initiated for a listed animal species in the Del Monte forest, such as the California red-legged frog (*Rana aurora draytonii*). To date, there have been no consultations or HCPs that addressed *P. yadonii* and its upland habitat in the Del Monte forest. However, in a recent Corps consultation on the California red-legged frog, only wetland habitats were addressed, and consideration of impacts to adjacent upland habitat that support *P. yadonii* were determined to be beyond the scope of consultation. The likelihood of future consultations or HCPs would depend largely on the configuration of future proposed development that might adversely affect the red-legged frog and trigger these actions. However, because the Act does not restrict the take of plants on private lands, the likelihood of future HCPs covering this species is low.

The educational benefits of critical habitat in this case are relatively low for most of the lands we are excluding, because previous publications have already identified and discussed their importance to the conservation of *Piperia yadonii*. The primary regulatory agencies that have permitting authority related to land use in this area are Monterey County and the Coastal Commission. These agencies and the landowner are well aware of where the *P. yadonii* and its Monterey pine forest habitat occur, due to the publication of the environmental impact statement for the Pebble Beach Company's DMF/PDP (Monterey County 2005) and California Coastal Commission staff reports on the proposed project. Therefore, we believe that the educational benefits that inclusion of these lands would provide for *P. yadonii* are relatively low.

Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed. However, the protection provided is still a limitation on the adverse effects that may occur to designated critical habitat, as opposed to a requirement to affirmatively provide a conservation benefit on those lands. As outlined above, the Company has committed to definite conservation actions on lands covered under the conservation agreement. Therefore, we believe the benefits to recovery based on inclusion of these lands in critical habitat for *Piperia yadonii* are low.

Therefore, we find that because of the agreement with Pebble Beach Company, the benefits of including the excluded Pebble Beach areas as critical habitat are low. The conservation stipulated in the agreement would likely not be

forthcoming if these areas were designated. Since the Act's protection of plants on private lands is low, the Service believes that it will achieve more conservation from this agreement than it would from a critical habitat designation on these lands.

Benefits of Exclusion

Implementation of the conservation agreement will provide benefits to *P. yadonii* as discussed earlier. The company has committed to manage *P. yadonii* and its Monterey Forest habitat and to conduct additional management-oriented research in areas identified for conservation in the conservation agreement until future approval of a development project is obtained. Once a future development project is approved, the Company has agreed to permanently preserve 511 acres of land on which *P. yadonii* occurs and to provide management of all conserved habitat areas in perpetuity. Because the interim management will be well-informed by management-oriented research, we expect it to promote the viability and growth of *P. yadonii* populations during the period prior to a future land dedication.

Benefits of Exclusion Outweigh the Benefits of Inclusion

The Pebble Beach Company committed to the conservation measures in the conservation agreement in recognition that some of its lands will not be designated as critical habitat while others will. It is probable that the Company would elect not to continue with the conservation commitments if the 143 acres to be excluded under Section 4(b)(2) were included in the final designation. We believe the proactive management of *P. yadonii* and its designated habitat provided under the conservation agreement provides significant benefits to this species that would be foregone in the absence of exclusion of the 143 acres. In contrast to the important benefits to designated habitat realized by exclusion of the 143 acres, the benefits of inclusion are, as noted above, likely to be minor because of the lack of a federal nexus that would serve to trigger section 7 consultation for projects affecting the 143 acres, and because, even in situations where consultation might occur, it would be unlikely to result in proactive management of the species and its Monterey pine forest habitat. Even with the exclusion of these lands, over 1,000 ac (405 ha) of critical habitat will still be designated in Units 4, 5, and 6. Over 900 ac (364 ha) are in Unit 6 on the Monterey Peninsula in the Del Monte Forest.

Further, because we have already come to agreement about how to manage the development at Pebble Beach and avoid adverse impacts to the status of the species, the further effort involved in consultations or other regulatory actions with respect to this site would be unnecessary. Therefore, a benefit of exclusion is avoiding additional regulatory uncertainty and process.

In conclusion, we have evaluated the potential regulatory and educational benefits that would result from inclusion of the 143 ac (58 ha) in Subunits 4a, 4b, 6a, 6b, 6c, and 6e. We have weighed these against the more tangible conservation benefits that would occur for the designated lands in Units 4, 5, and 6 under the conservation agreement and conclude that, due to the configuration and size of the area considered for exclusion, the large acreage in Unit 6 that would still be designated as critical habitat, and the benefits that could accrue on those designated lands under the conservation agreement, the benefits of exclusion outweigh the benefits of inclusion; therefore, we are excluding the 143 ac (58 ha) under section 4(b)(2) of the Act.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of the 143 ac (58 ha) from Units 4 and 6 based on the conservation agreement from the final designation of critical habitat will result in the extinction of *P. yadonii*. Overall, this area represents less than 15 percent of the proposed designation in Units 4, 5, and 6, and does not support the greatest concentrations of plants or the highest quality habitat of the lands we are designating as critical habitat. In addition, because the 143 acres we are excluding from critical habitat are occupied by *P. yadonii*, consultations under Section 7 that involve these lands will occur even in the absence of their designation as critical habitat. Application of the jeopardy standard of section 7 of the Act also provides assurances that the species will not go extinct.

Relationship of Critical Habitat to Other Lands—Exclusions Under Section 4(b)(2) of the Act

Stevenson School Property

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

In making the following exclusion, we have considered in general that all of the costs and other impacts predicted in the economic analysis might not be avoided by this exclusion. This is because the area in question is currently occupied by *P. yadonii* and there will be requirements for consultation under section 7 of the Act. In conducting economic analyses, we are guided by the ruling in *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service*, 248F.3d 1285 (10th Cir 2001), which directed us to consider all impacts ''regardless of whether those impacts are attributable co-extensively to other causes.'' As explained in the economic analysis, due to possible overlapping regulatory schemes and other reasons, some elements of the analysis may also overstate some costs.

Conversely, in *Gifford Pinchot,* the court ruled that our regulations are invalid because they define adverse modification as affecting both survival and recovery of a species. The court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. Compliance with the court's direction may result in additional costs associated with critical habitat designation. In light of the *New Mexico Cattle Growers* decision, our current approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, and 10 of the Act, and should encompass costs that we would consider and evaluate in light of the *Gifford Pinchot* ruling.

Application of Section 4(b)(2) of the Act—Economic Exclusion of Stevenson School Property

The Stevenson School is a non-profit, non-sectarian, independent, K–12 school that owns approximately 6 ac (2.4 ha) in unit 6a. The Stevenson School has plans to develop a portion of its campus (called the ''Forested Area'' in its Master Plan) into an athletic field. The Master Plan for the Campus was developed in the 1980s and submitted to the Monterey County Board of Supervisors in 1983. The Master Plan, which includes plans for new educational facilities, residence halls, as well as athletic facilities, has been implemented in stages since 1983. Although the Stevenson School has not developed the Forested Area yet, it has stated that it intends to do so in the future, as planned out in the Master Plan. The Stevenson School currently

uses a nearby athletic field owned by the PBC called Collins Field. However, the PBC can revoke this agreement at any time. The Stevenson School plans to develop the Forested Area according to the timeline laid out in the Master Plan to ensure its students are guaranteed an additional on-campus athletic field to use. If the PBC revokes its agreement and the Stevenson School cannot develop the Forested Area, the alternatives, according to the Stevenson School, include bussing students to an alternative field or eliminating some sports programs.

The final economic analysis identifies estimated potential costs to the Stevenson School could range from $0.006 to $9.2 million (present value at a three percent discount rate) over 20 years. At the low end of the range, the Stevenson School may require a permit from the U.S. Army Corps of Engineers (ACOE) to comply with section 404 of the Clean Water Act because the Stevenson School property contains drainages on the border that may be considered waters of the United States. If the Stevenson School designs its athletic field in such a way that it would impact the drainages, Federal nexus resulting from the ACOE permitting of the activity may require a section 7 consultation with the Service regarding *P. yadonii*. The consultation would result in administrative costs to the Stevenson School of approximately $5,579 (present value at a three percent discount rate). At the upper end of the range, economic impacts are the result of the disutility cost of transporting student athletes to the alternative field during school hours plus the cost of purchasing more buses and fuel, and hiring more drivers. In addition, the Stevenson School may lose other benefits associated with the athletic field; however, those benefits are unknown and too hypothetical to quantify. If the student athletes are transported to the alternative field, the total cost to the Stevenson School could be as high as $9.2 million (present value at a three percent discount rate) over the next 20 years.

Benefits of Inclusion

The benefits of including lands in critical habitat can be regulatory, educational, or to aid in recovery of species as generally discussed earlier in this rule. In the case of *P. yadonii* on the Stevenson School property, the Federal nexus would most likely occur due to either wetland impacts that require a Corps permit, or via a consultation on an HCP that was initiated for a listed animal species. To date, there have been no consultations or HCPs that addressed *P. yadonii* and its upland habitat. In a recent Corps consultation on the California red-legged frog, only wetland habitats were addressed, and consideration of impacts to adjacent upland habitat that support *P. yadonii* were determined to be beyond the scope of consultation. The likelihood of future consultations or HCPs would depend largely on the configuration of future proposed development that might adversely affect the California red-legged frog and trigger these actions. However, because the Act does not restrict the take of plants on private lands, the likelihood of future HCPs covering this species is low. Therefore we have determined that the regulatory benefits of designating critical habitat on the Stevenson School property would be low.

Additionally, including the Stevenson School parcel in critical habitat could provide an educational benefit, signaling the importance of those lands to others, including the Coastal Commission and the County of Monterey. However, both of these entities already recognize and consider the importance of conserving sensitive resources, including *P. yadonii*, in their project review process and future buildout on the Stevenson School parcel would be subject to the requirements of those agencies. Therefore, we have determined that the educational benefits of designating critical habitat on the Stevenson School property would be low.

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The designation of critical habitat may provide a different level of protection under section 7(a)(2) for *P. yadonii* that is separate from the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of a listed species. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed, but it is not possible to quantify this benefit at present. However, the protection provided limits adverse effects as opposed to a requirement to provide a conservation benefit.

Benefits of Exclusion

We believe that the benefits of excluding the Stevenson School property from the designation of critical habitat—avoiding the potential economic impacts predicted in the economic analysis—exceed the educational, regulatory, and recovery benefits which could result from including those lands in the designation of critical habitat.

We have evaluated and considered the potential economic costs on the Stevenson School relative to the potential benefit for *P. yadonii* and its primary constituent elements that could result from the designation of critical habitat. We believe that the potential economic impact of up to approximately $9.2 million (undiscounted, over the next 20 years) on the school significantly outweighs the potential conservation and protective benefits for the species and its primary constituent elements derived from the potential restrictions as a result of this designation on educational facilities constructed on this site.

We believe that excluding the Stevenson School property, and thus relieving the school of additional costs that would result from compliance with the designation, will allow the School the flexibility to plan for the best use of their lands for the educational benefits of their students. We therefore find that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them in the designation.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of the 6 ac (2.4 ha) from subunit 6a will result in the extinction of *P. yadonii*. Overall, this area represents less than 0.5 percent of the proposed designation in Unit 6, and does not support the greatest concentrations of plants or the highest quality habitat of the lands we are designating as critical habitat. In addition, because the 6 ac (2.4 ha) we are excluding from critical habitat are occupied by *P. yadonii*, if a Federal nexus is present, consultations under Section 7 that involve these lands may occur even in the absence of their designation as critical habitat. Application of the jeopardy standard of section 7 of the Act, if consultation occurs, also provides assurances that the species will not go extinct.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions

outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effects of the designation. The draft analysis was made available for public review on August 7, 2007 (72 FR 44069). We accepted comments on the draft analysis until September 6, 2007. Following the close of the comment period, we reviewed and considered the public comments and information we received and prepared responses to those comments (see Responses to Comments section above) or incorporated the information or changes directly into this final rule or our final economic analysis.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Piperia yadonii*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

The final economic analysis attempts to isolate those direct and indirect impacts that are expected to be triggered specifically by the critical habitat designation. That is, the incremental conservation efforts and associated impacts included in this appendix would not be expected to occur absent the designation of critical habitat for the species.

The proposed rule may impact two landowners, the Pebble Beach Company (PBC), and the Stevenson School. Incremental impacts to PBC are estimated to range from $0 to $2.6 million, depending on the scenarios described in section V of this analysis. The Stevenson School may bear incremental administrative impacts as a result of addressing adverse modification in section 7 consultation. The Stevenson School may bear additional incremental impacts associated with the modifications that may be placed on the project to address adverse modification, but these project modifications are too hypothetical to quantify. The remaining impacts quantified in the report, which are discussed below, are expected to occur regardless of the designation of critical habitat.

Coextensive Future Impacts: The economic analysis forecasts future coextensive impacts associated with conservation efforts for the piperia within areas of proposed critical habitat to range from $6.6 to $16.1 million (present value at a three percent discount rate) over the next 20 years ($0.43 to $1.0 million annualized). Impacts to PBC, and the Stevenson School comprise the majority of the total quantified impacts in the areas of proposed critical habitat.

- Pebble Beach Company: PBC, which manages land in units 4a, 4b, 5, 6a, 6b, 6c, and 6e, has implemented management techniques designed to conserve the piperia and its habitat. Efforts include ongoing open space management and maintenance, golf course and residential area management and maintenance, site clean up and restoration, and monitoring and patrolling. As a result, total impacts to the Pebble Beach Company of protecting and restoring the piperia habitat are $5.5 million (present value at a three percent discount rate) over 20 years.
- Stevenson School: The Stevenson School, which owns land in unit 6a, plans to develop an area of proposed critical habitat into an athletic field in the future. Currently, the Stevenson School is in an agreement to use a field owned by the PBC, but an approved PBC development plan will eliminate the School's ability to use the PBC field. If the Stevenson School cannot develop the field, the School would have to transport student athletes to an alternative off-campus site. If the Stevenson School can develop the field, section 7 of the ESA will likely apply because of the Clean Water Act, which will trigger a federal nexus, and require the ACOE to consult with the Service, leading to administrative costs to the Stevenson School. After the designation of critical habitat, the outcome of the biological opinion from the section 7 consultation may be more costly due to additional measures to address the potential for adverse modification of critical habitat. As a result, the potential economic impacts to the Stevenson School could range from $0.006 to $9.2 million (present value at a three percent discount rate) over 20 years.

We evaluated the potential economic impact of this designation as identified in the draft analysis. Based on this evaluation, we have excluded Stevenson School for economic reasons. We have also excluded Pebble Beach Company lands for conservation partnership reasons.

A copy of the final economic analyses with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section) or for downloading from the Internet at *http://www.fws.gov/ventura*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A–4, September 17, 2003). Under Circular A–4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the

benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both, constitutes our regulatory alternative analysis for designations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7(a)(2) of the Act on activities they fund, permit, or implement that may affect *Piperia yadonii*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

To determine if the proposed designation of critical habitat for *Piperia yadonii* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development). There is only one entity that qualifies as a small entity under SBRFA, the Stevenson School. The economic impacts to the Stevenson School are presented as a range, with the upper end of the range calculated under the assumption that the Stevenson School cannot develop the athletic field and the lower end of the range calculated under the assumption that the Stevenson School can develop the athletic field and thereby impacted by the administrative costs of section 7 consultation. The potential economic impacts to the Stevenson School could range from $0.006 to $9.2 million present value at a three percent discount rate) over 20 years.

These impacts are attributed to the presence of the piperia in the Forested Area, not to the proposed rule. The incremental impacts are therefore only those expected to result from considering adverse modification in addition to jeopardy in the case that consultation occurs for the project ($1,335, present value at a three percent discount rate). Project modifications that may be placed on the project to address adverse modification could add additional costs to the Stevenson School. We have excluded the Stevenson School in the final rule, so these impacts will not occur as a result of this designation. Therefore we certify that this rule will not have a significant economic impact on a substantial number of small business entities.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this final rule to designate critical habitat for *Piperia yadonii* is a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues, our economic analysis determined that it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates

to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because only 0.9 percent (19 ac/8 ha) of the total critical habitat designation for *Piperia yadonii* is owned by a small government entity, the City of Pacific Grove. Furthermore, a large portion of these lands are designated as parks or open space and are managed at least in part for conservation of natural resources. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *Piperia yadonii* in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat for *P. yadonii* does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. A large portion of these lands are designated as parks or open space and are managed at least in part for conservation of natural resources and a small proportion (0.9 percent) occurs within the jurisdiction of a single small government entity. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Piperia yadonii.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

It is our position that, outside the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit Court of Appeals (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing or currently that contain the features essential for the conservation of *Piperia yadonii* and no Tribal lands that are unoccupied that are essential for the conservation of *P. yadonii.* Therefore, critical habitat for *P. yadonii* has not been proposed for designation on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for ''*Piperia yadonii*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Piperia yadonii	Yadon's piperia	U.S.A (CA)	Orchidaceae (Orchid)	E	1998	17.96(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.96(a), amend paragraph (a) by adding in alphabetical order an entry for Family Orchidaceae consisting of *Piperia yadonii* to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Orchidaceae: *Piperia yadonii* (Yadon's piperia)

(1) Critical habitat units are depicted for Monterey County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Piperia yadonii* are the habitat components that provide:

(i) A vegetation structure providing filtered sunlight on sandy soils:

(A) Coastal pine forest (primarily Monterey pine) with a canopy coverof 20 to 70 percent, and a sparse herbaceous understory on Baywood sands, Narlon loamy fine sands, Sheridan coarse sandy loams, Tangair fine sands, Santa Lucia shaly clay loams and Chamise shaley clay loams underlain by a hardpan; or

(B) Maritime chaparral ridges with dwarfed shrubs (primarily Hooker's manzanita) on Reliz shaly clay loams, Sheridan sandy loams, Narlon sandy loams, Arnold loamy sands and soils in the Junipero–Sur complex, Rock Outcrop–Xerorthents Association, and Arnold–Santa Ynez complex, often underlain by rock outcroppings.

(ii) Presence of nocturnal, short-tongued moths in the families Pyralidae, Geometridae, Noctuidae, and Pterophoridae.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical Habitat Map Units—Data layers defining map units were created on base maps using aerial imagery from the National Agricultural Imagery Program; aerial imagery captured June 2005. Data were project to Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 1983.

(5) Note: Index map of critical habitat for Piperia yadonii (Map 1) follows:

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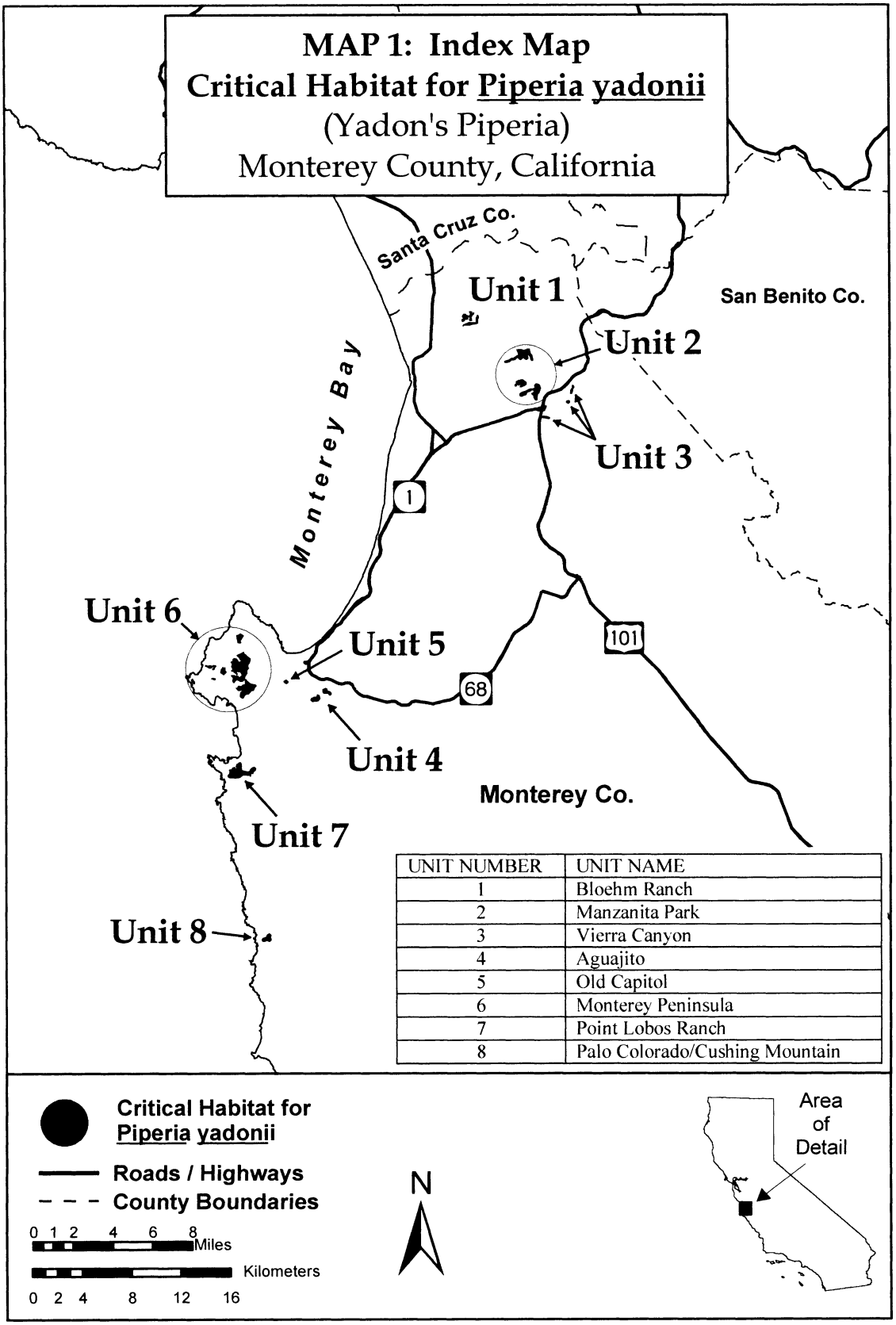

UNIT NUMBER	UNIT NAME
1	Bloehm Ranch
2	Manzanita Park
3	Vierra Canyon
4	Aguajito
5	Old Capitol
6	Monterey Peninsula
7	Point Lobos Ranch
8	Palo Colorado/Cushing Mountain

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(6) Unit 1: Blohm Ranch, Monterey County, California.

(i) Subunit 1a: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 611901, 4079098; 611902, 4079137; 611917, 4079156; 611974, 4079198; 612002, 4079216; 612037, 4079247; 612049, 4079272; 612042, 4079293; 611982, 4079311; 611952, 4079324; 611943, 4079354; 611929, 4079419; 611930, 4079454; 611972, 4079486; 611987, 4079543; 612012, 4079583; 612011, 4079594; 612038, 4079619; 612190, 4079608; 612190, 4079539; 612216, 4079511; 612324, 4079491; 612343, 4079504; 612387, 4079471; 612456, 4079471; 612514, 4079509; 612558, 4079614; 612558, 4079724; 612489, 4079761; 612455, 4079807; 612459, 4079821; 612511, 4079847; 612550, 4079852; 612589, 4079847; 612625, 4079832; 612654, 4079812; 612673, 4079796; 612655, 4079782; 612630, 4079752; 612603, 4079744; 612647, 4079619; 612734, 4079691; 612754, 4079691; 612762, 4079710; 612785, 4079745; 612846, 4079723; 612827, 4079702; 612815, 4079690; 612804, 4079670; 612797, 4079645; 612795, 4079611; 612746, 4079599; 612716, 4079588; 612674, 4079586; 612655, 4079569; 612683, 4079496; 612666, 4079450; 612629, 4079411; 612638, 4079375; 612651, 4079353; 612661, 4079323; 612665, 4079286; 612624, 4079249; 612624, 4079222; 612635, 4079209; 612646, 4079194; 612662, 4079183; 612713, 4079155; 612682, 4079133; 612642, 4079112; 612585, 4079109; 612530, 4079112; 612521, 4079147; 612509, 4079197; 612576, 4079313; 612588, 4079337; 612589, 4079337; 612580, 4079358; 612579, 4079358; 612563, 4079371; 612537, 4079381; 612497, 4079398; 612474, 4079403; 612398, 4079417; 612367, 4079417; 612350, 4079399; 612346, 4079383; 612357, 4079360; 612369, 4079340; 612383, 4079316; 612395, 4079275; 612390, 4079255; 612380, 4079233; 612350, 4079218; 612286, 4079200; 612233, 4079178; 612196, 4079184; 612165, 4079184; 612143, 4079168; 612128, 4079150; 612128, 4079119; 612127, 4079094; 611959, 4078999; 611958, 4078999; 611931, 4079027; 611911, 4079061; returning to 611901, 4079098.

(ii) Subunit 1b: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 611998, 4078651; 611999, 4078664; 611999, 4078665; 612044, 4078765; 612187, 4078803; 612213, 4078825; 612254, 4078844; 612284, 4078853; 612336, 4078871; 612385, 4078907; 612423, 4078925; 612458, 4078940; 612479, 4078947; 612520, 4078956; 612604, 4078959; 612662, 4078959; 612704, 4078960; 612812, 4078958; 612850, 4078951; 612897, 4078953; 612988, 4078967; 613045, 4078913; 613060, 4078936; 613099, 4078949; 613101, 4078961; 613094, 4078978; 613084, 4079005; 613073, 4079060; 613062, 4079129; 613051, 4079222; 613044, 4079306; 613056, 4079376; 613064, 4079397; 613082, 4079431; 613099, 4079501; 613130, 4079602; 613168, 4079601; 613177, 4079580; 613180, 4079551; 613198, 4079533; 613212, 4079488; 613220, 4079438; 613212, 4079355; 613203, 4079303; 613176, 4079297; 613165, 4079281; 613166, 4079253; 613195, 4079224; 613195, 4079212; 613176, 4079198; 613174, 4079174; 613177, 4079155; 613196, 4079139; 613205, 4079091; 613208, 4079041; 613195, 4078982; 613186, 4078964; 613182, 4078941; 613177, 4078906; 613172, 4078906; 613162, 4078914; 613153, 4078927; 613130, 4078938; 613103, 4078930; 613086, 4078918; 613073, 4078906; 613061, 4078885; 613061, 4078882; 612802, 4078842; 612765, 4078826; 612627, 4078767; 612606, 4078767; 612578, 4078759; 612552, 4078744; 612445, 4078722; 612278, 4078704; 612253, 4078701; 612170, 4078702; 612124, 4078719; 612110, 4078724; 612055, 4078722; 612071, 4078638; returning to 611998, 4078651.

(iii) Note: Unit 1 is depicted on Map 2 in paragraph (9)(iv) of this entry.

(7) [Reserved]

(8) Unit 2: Manzanita Park, Monterey County, California.

(i) Subunit 2a: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 615541, 4076005; 615651, 4076047; 615859, 4076125; 616111, 4076311; 616209, 4076287; 616278, 4076318; 616316, 4076335; 616416, 4076435; 616503, 4076520; 616659, 4076565; 616566, 4076763; 616534, 4076874; 616515, 4076874; 616454, 4077003; 616562, 4077020; 616677, 4077028; 616820, 4077021; 616876, 4077008; 616925, 4076975; 617013, 4076959; 617053, 4076962; 617137, 4077017; 617176, 4077025; 617224, 4077020; 617259, 4077038; 617271, 4077094; 617286, 4077095; 617333, 4077097; 617481, 4077105; 617482, 4077105; 617488, 4076972; 617540, 4076890; 617565, 4076771; 617594, 4076701; 617703, 4076645; 617728, 4076486; 617830, 4076204; 617787, 4076190; 617729, 4076197; 617671, 4076233; 617643, 4076273; 617579, 4076433; 617565, 4076533; 617468, 4076615; 617445, 4076631; 617435, 4076657; 617402, 4076656; 617361, 4076620; 617305, 4076601; 617309, 4076551; 617377, 4076484; 617396, 4076450; 617407, 4076402; 617403, 4076354; 617377, 4076301; 617341, 4076268; 617287, 4076245; 617229, 4076245; 617167, 4076273; 617079, 4076356; 616934, 4076322; 616910, 4076259; 616884, 4076229; 616851, 4076207; 616814, 4076195; 616775, 4076192; 616737, 4076200; 616702, 4076217; 616655, 4076267; 616599, 4076383; 616511, 4076307; 616465, 4076283; 616430, 4076225; 616388, 4076189; 616213, 4076130; 616160, 4076127; 616111, 4076139; 616092, 4076133; 615967, 4076012; 615897, 4075959; 615835, 4075931; 615776, 4075922; 615706, 4075898; 615620, 4075896; 615575, 4075879; returning to 615541, 4076005.

(ii) Subunit 2b: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 616488, 4074150; 616505, 4074167; 616533, 4074172; 616573, 4074209; 616573, 4074219; 616555, 4074267; 616557, 4074347; 616567, 4074401; 616736, 4074502; 616746, 4074512; 616760, 4074521; 616779, 4074536; 616804, 4074543; 616826, 4074543; 616853, 4074543; 616876, 4074540; 616890, 4074537; 616915, 4074552; 616943, 4074575; 617092, 4074595; 617327, 4074410; 617348, 4074387; 617367, 4074354; 617374, 4074335; 617379, 4074301; 617380, 4074258; 617379, 4074219; 617379, 4074218; 617346, 4074185; 617298, 4074145; 617219, 4074073; 617199, 4074072; 617186, 4074083; 617159, 4074076; 617134, 4074069; 617131, 4074058; 617114, 4074034; 616994, 4073984; 616944, 4073991; 616918, 4074001; 616981, 4074157; 617003, 4074188; 616891, 4074250; 616860, 4074246; 616845, 4074178; 616845, 4074160; 616853, 4074117; 616747, 4074137; 616712, 4074146; 616701, 4074171; 616673, 4074179; 616646, 4074104; 616652, 4074081; 616642, 4074056; 616620, 4074046; 616591, 4074041; 616568, 4074035; 616546, 4074023; 616532, 4074006; 616531, 4074006; 616490, 4074054; returning to 616488, 4074150.

(iii) Subunit 2c: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 616931, 4073371; 616936, 4073410; 616951, 4073446; 616975, 4073477; 617003, 4073500; 617077, 4073542; 617094, 4073556; 617142, 4073581; 617382, 4073670; 617411, 4073676; 617450, 4073676; 617435, 4073712; 617512, 4073743; 617549, 4073763; 617598, 4073810; 617636, 4073830; 617694, 4073860; 617739, 4073865; 617774, 4073887; 617847, 4073880; 617879,

4073885; 617960, 4073894; 618016, 4073916; 618064, 4073947; 618117, 4073965; 618279, 4073927; 618244, 4074007; 618138, 4074038; 618106, 4074053; 618104, 4074059; 618103, 4074108; 618076, 4074150; 618071, 4074184; 618081, 4074204; 618095, 4074224; 618117, 4074247; 618176, 4074299; 618229, 4074318; 618261, 4074316; 618307, 4074300; 618370, 4074293; 618407, 4074278; 618448, 4074248; 618468, 4074227; 618507, 4074173; 618519, 4074146; 618533, 4074088; 618553, 4074051; 618566, 4074011; 618572, 4073986; 618574, 4073952; 618568, 4073913; 618533, 4073788; 618521, 4073761; 618495, 4073722; 618496, 4073601; 618482, 4073567; 618369, 4073570; 618365, 4073277; 618364, 4073029; 618261, 4072958; 618212, 4072996; 618157, 4073061; 618131, 4073086; 618090, 4073147; 618078, 4073173; 618064, 4073256; 618067, 4073314; 618081, 4073377; 618072, 4073413; 618044, 4073404; 618015, 4073401; 617985, 4073404; 617957, 4073413; 617931, 4073426; 617902, 4073452; 617885, 4073476; 617873, 4073501; 617927, 4073549; 618040, 4073586; 618063, 4073730; 618123, 4073826; 618134, 4073831; 618168, 4073834; 618228, 4073818; 618235, 4073822; 618191, 4073875; 618082, 4073823; 618062, 4073827; 618042, 4073815; 618025, 4073781; 617967, 4073798; 617970, 4073818; 617934, 4073823; 617913, 4073790; 617874, 4073780; 617778, 4073781; 617786, 4073711; 617701, 4073663; 617644, 4073637; 617551, 4073622; 617545, 4073563; 617491, 4073517; 617470, 4073382; 617262, 4073305; 617237, 4073287; 617138, 4073233; 617100, 4073222; 617071, 4073221; 617032, 4073229; 616997, 4073246; 616968, 4073272; 616946, 4073305; 616934, 4073342; returning to 616931, 4073371.

(iv) Note: Unit 2 is depicted on Map 2 in paragraph (9)(iv) of this entry.

(9) Unit 3: Vierra Canyon, Monterey County, California.

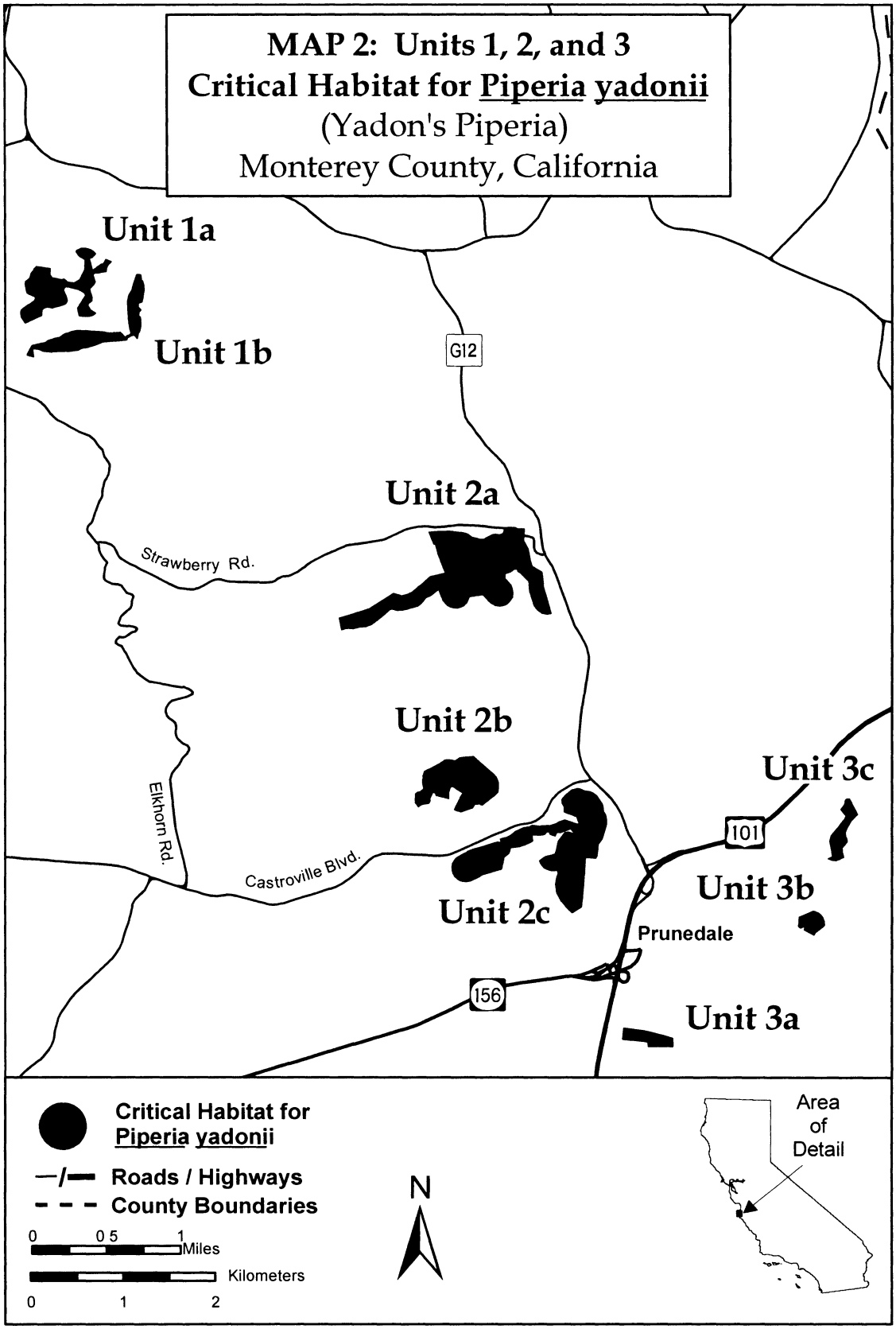
(i) Subunit 3a: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 618886, 4071622; 618896, 4071742; 619157, 4071722; 619431, 4071664; 619441, 4071576; 619441, 4071573; 619385, 4071569; 619171, 4071553; 619166, 4071601; 618901, 4071615; 618892, 4071615; returning to 618886, 4071622.

(ii) Subunit 3b: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 620707, 4073069; 620865, 4073146; 620890, 4073140; 620917, 4073128; 620941, 4073111; 620961, 4073089; 620977, 4073064; 620987, 4073037; 620992, 4072992; 620897, 4072908; 620886, 4072879; 620778, 4072930; 620784, 4072971; 620736, 4072950; 620709, 4072963; returning to 620707, 4073069.

(iii) Subunit Unit 3c: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 620984, 4073724; 621030, 4073752; 620987, 4073916; 620997, 4073968; 620996, 4073974; 621079, 4074094; 621133, 4074174; 621144, 4074209; 621084, 4074270; 621123, 4074335; 621127, 4074380; 621146, 4074396; 621173, 4074395; 621273, 4074227; 621256, 4074215; 621246, 4074203; 621206, 4074150; 621177, 4074089; 621151, 4074025; 621163, 4073968; 621171, 4073965; 621179, 4073920; 621159, 4073901; 621160, 4073898; 621124, 4073845; 621131, 4073829; 621129, 4073827; 621153, 4073753; 621073, 4073708; 621025, 4073710; returning to 620984, 4073724.

(iv) Note: Map of Units 1, 2, and 3 (Map 2) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(10) Unit 4: Aguajito, Monterey County, California.

(i) Subunit 4a: From USGS 1:24,000 scale quadrangle Seaside. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 602332, 4048354; 602347, 4048427; 602354, 4048439; 602362, 4048452; 602366, 4048456; 602401, 4048489; 602508, 4048576; 602697, 4048582; 602735, 4048574; 602762, 4048562; 602786, 4048545; 602817, 4048507; 602832, 4048471; 602858, 4048345; 603034, 4048312; 603069, 4048294; 603115, 4048262; 603136, 4048241; 603158, 4048209; 603171, 4048172; 603173, 4048133; 603166, 4048094; 603143, 4048051; 603107, 4048018; 603072, 4048000; 603024, 4047993; 602966, 4048004; 602522, 4048105; 602451, 4048153; 602400, 4048198; 602373, 4048240; 602351, 4048287; returning to 602332, 4048354.

(ii) Subunit 4b: From USGS 1:24,000 scale quadrangle Seaside. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 601574, 4047589; 601594, 4047664; 601625, 4047701; 601657, 4047723; 601695, 4047736; 601778, 4047749; 601839, 4047778; 601926, 4047801; 601965, 4047804; 602014, 4047795; 602048, 4047863; 602058, 4047918; 602064, 4047991; 602022, 4048044; 602000, 4048080; 601988, 4048107; 601973, 4048163; 601962, 4048239; 602022, 4048231; 602007, 4048253; 602060, 4048243; 602206, 4048211; 602231, 4048211; 602246, 4048135; 602250, 4048108; 602256, 4048082; 602264, 4048071; 602278, 4048051; 602309, 4048008; 602318, 4047990; 602345, 4047913; 602355, 4047883; 602350, 4047838; 602325, 4047746; 602278, 4047654; 602262, 4047623; 602199, 4047551; 602130, 4047497; 602054, 4047470; 601996, 4047474; 601864, 4047460; 601773, 4047445; 601743, 4047440; 601704, 4047440; 601657, 4047454; 601611, 4047490; 601582, 4047540; returning to 601574, 4047589.

(iii) Note: Unit 4 is depicted on Map 3 in paragraph (12)(xv) of this entry.

(11) Unit 5: Old Capitol, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 599314, 4048918; 599497, 4049056; 599551, 4048997; 599551, 4048976; 599552, 4048959; 599562, 4048939; 599593, 4048923; 599625, 4048931; 599640, 4048934; 599655, 4048928; 599675, 4048937; 599685, 4048913; 599666, 4048844; 599649, 4048821; 599603, 4048784; 599561, 4048761; 599516, 4048757; 599437, 4048777; 599370, 4048808; 599329, 4048864; returning to 599314, 4048918.

(ii) Note: Unit 5 is depicted on Map 3 in paragraph (12)(xv) of this entry.

(12) Unit 6: Monterey Peninsula, Monterey County, California.

(i) Subunit 6a (portion between Forest Lake Road and Lopez Road): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 594289.967, 4049237.581; 594267.618, 4049251.760; 594263, 4049271; 594241.397, 4049281.713; 594230.805, 4049278.096; 594214.503, 4049291.804; 594166.894, 4049364.694; 594176.917, 4049369.673; 594186.521, 4049380.709; 594196.880, 4049403.089; 594210.082, 4049442.288; 594216.994, 4049476.435; 594229.293, 4049570.617; 594241.651, 4049610.586; 594287.923, 4049701.637; 594338.715, 4049801.237; 594339.817, 4049802.777; 594348, 4049799; 594354, 4049797; 594354, 4049795; 594355, 4049717; 594451, 4049718; 594500, 4049735; 594512, 4049669; 594516.717, 4049635.323; 594514.946, 4049608.292; 594510.651, 4049578.721; 594505.106, 4049541.754; 594500.823, 4049516.756; 594500.581, 4049505.979; 594501.352, 4049498.500; 594502.886, 4049491.140; 594505.184, 4049484.320; 594508.514, 4049476.166; 594512.335, 4049469.471; 594516.239, 4049464.140; 594520.679, 4049459.245; 594525.606, 4049454.841; 594531.898, 4049450.388; 594539.672, 4049446.666; 594548.703, 4049443.138; 594554.822, 4049441.050; 594564.127, 4049438.323; 594572.946, 4049436.064; 594582.012, 4049431.785; 594588.766, 4049426.645; 594594.416, 4049420.310; 594598.418, 4049413.711; 594600.523, 4049407.460; 594603.006, 4049397.784; 594604.979, 4049387.614; 594607.304, 4049381.221; 594609.935, 4049375.747; 594584, 4049338; 594573, 4049333; 594557, 4049321; 594544, 4049303; 594544, 4049289; 594547, 4049272; 594547, 4049253.000; 594538, 4049237; 594472, 4049167; 594453, 4049150; 594446.759, 4049141.029; 594441.513, 4049144.159; 594348, 4049199; 594355, 4049219; returning to 594289.967, 4049237.581.

(ii) Subunit 6a (portion north of Morris Drive): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 596121, 4050849; 596117.233, 4050841.631; 596114.620, 4050840.555; 596109.729, 4050839.063; 596103.326, 4050838.039; 596096.103, 4050838.069; 596088.735, 4050839.482; 596080.383, 4050841.481; 596072.392, 4050843.713; 596064.531, 4050846.222; 596058.663, 4050848.305; 596051.053, 4050851.282; 596044.058, 4050854.305; 596033.962, 4050859.130; 596016.951, 4050866.753; 596001.620, 4050872.806; 595985.651, 4050878.329; 595968.711, 4050883.356; 595953.831, 4050887.092; 595943.540, 4050889.313; 595936.170, 4050889.798; 595925.089, 4050890.098; 595911.434, 4050889.762; 595897.656, 4050888.628; 595886.642, 4050887.141; 595874.824, 4050884.959; 595863.953, 4050882.401; 595853.066, 4050879.170; 595840.011, 4050874.858; 595824.735, 4050869.336; 595809.054, 4050863.117; 595794.290, 4050856.734; 595779.189, 4050850.247; 595765.663, 4050843.950; 595755.155, 4050838.710; 595744.162, 4050832.891; 595733.283, 4050826.778; 595724.193, 4050820.701; 595713.698, 4050813.076; 595702.950, 4050804.528; 595693.694, 4050796.502; 595686.111, 4050789.421; 595678.697, 4050782.009; 595670.691, 4050774.057; 595662.547, 4050766.912; 595653.948, 4050760.193; 595643.427, 4050752.976; 595634.919, 4050747.856; 595625.202, 4050742.712; 595616.147, 4050738.537; 595605.957, 4050734.502; 595595.897, 4050731.216; 595579.392, 4050726.890; 595558.919, 4050722.484; 595541.632, 4050719.570; 595525.140, 4050717.462; 595510.317, 4050716.119; 595497.922, 4050715.394; 595486.247, 4050715.162; 595474.894, 4050715.805; 595465.549, 4050717.074; 595432, 4050797; 595946, 4051094; 595954, 4051085; 595953, 4051067; 595953, 4051053; 595956, 4051034; 595963, 4051011; 595972, 4050989; 595984, 4050968; 596000, 4050950; 596035, 4050912; returning to 596121, 4050849.

(iii) Subunit 6a (Huckleberry Hill portion): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 596121, 4048995; 596114.435, 4048981.020; 596111.136, 4048973.151; 596108.142, 4048965.208; 596105.454, 4048957.114; 596103.071, 4048948.946; 596100.993, 4048940.704; 596099.068, 4048932.387; 596097.601, 4048924.073; 596096.727, 4048918.049; 596094.961, 4048908.666; 596093.180, 4048901.722; 596090.941, 4048894.850; 596090.194, 4048892.559; 596075.586, 4048855.180; 596044.639, 4048787.944; 596040.015, 4048778.903; 596034.930, 4048770.237; 596030.582, 4048763.941; 596026.078, 4048757.872; 596021.113, 4048752.103; 596017.649, 4048748.408; 596014.185, 4048744.789; 596010.566, 4048741.320; 596004.831, 4048736.381; 596000.751, 4048733.288; 595998.787, 4048731.742; 595994.706, 4048728.802; 595988.352, 4048724.693; 595983.962, 4048722.131; 595981.689, 4048720.962; 595979.416, 4048719.795; 595975.023, 4048717.536; 595970.322, 4048715.427; 595965.619, 4048713.546; 595963.344, 4048712.607; 595956.209, 4048710.166; 595948.918, 4048708.104; 595943.903,

4048706.982; 595939.037, 4048706.013; 595934.018, 4048705.196; 595928.997, 4048704.530; 595923.974, 4048704.018; 595918.949, 4048703.734; 595835.009, 4048702.117; 595829.978, 4048702.289; 595824.945, 4048702.691; 595817.470, 4048703.522; 595814.875, 4048703.874; 595809.990, 4048704.734; 595802.505, 4048706.404; 595800.376, 4048706.944; 595798, 4048708; 595762, 4048723; 595761, 4048724; 595739, 4048743; 595733.894, 4048751.431; 595730.885, 4048761.683; 595730.310, 4048772.343; 595731.877, 4048782.112; 595734.506, 4048792.426; 595734.563, 4048800.960; 595733.119, 4048807.573; 595728.590, 4048817.426; 595725.142, 4048826.074; 595722.591, 4048836.331; 595721.878, 4048845.617; 595722.245, 4048853.774; 595723.678, 4048861.865; 595726.474, 4048870.810; 595729.744, 4048878.237; 595735.436, 4048887.137; 595741.604, 4048894.292; 595748.688, 4048901.227; 595756.387, 4048907.712; 595764.398, 4048913.668; 595772.266, 4048918.555; 595779.212, 4048924.270; 595783.576, 4048929.194; 595788.071, 4048936.101; 595790.747, 4048942.149; 595792.648, 4048949.332; 595793.481, 4048956.655; 595792.933, 4048964.878; 595788.510, 4048978.999; 595781.840, 4048989.592; 595773.660, 4048998.948; 595765.407, 4049005.918; 595876, 4049140; 595883, 4049146; 595891, 4049158; 595930, 4049207; 595924, 4049215; 595929, 4049224; 595759, 4049460; 595749, 4049453; 595718, 4049483; 595671, 4049449; 595594, 4049477; 595482, 4049468; 595462, 4049369; 595546, 4049277; 595476, 4049214; 595407, 4049320; 595398, 4049332; 595379, 4049348; 595360, 4049358; 595245, 4049402; 595234, 4049415; 595234, 4049456; 595169, 4049482; 595110, 4049477; 595063, 4049474; 595058, 4049541; 595079, 4049565; 595102, 4049571; 595119, 4049575; 595140, 4049584; 595150, 4049615; 595159, 4049642; 595130, 4049674; 595090, 4049729; 595067, 4049769; 595039, 4049811; 595027, 4049835; 595027, 4049851; 595037, 4049882; 595060, 4049943; 595074, 4050018; 595084, 4050058; 595081, 4050093; 595057.323, 4050156.455; 594990.554, 4050158.347; 594967.842, 4050159.586; 594941.815, 4050161.163; 594939.740, 4050161.513; 594954, 4050173; 594969, 4050191; 594986, 4050216; 594995, 4050239; 595012, 4050254; 595029, 4050260; 595045, 4050258; 595063, 4050252; 595089, 4050249; 595114, 4050261; 595129, 4050283; 595135, 4050315; 595127, 4050348; 595118, 4050375; 595115, 4050400; 595117, 4050427; 595121, 4050447; 595131, 4050460; 595146, 4050469; 595168, 4050477; 595183, 4050486; 595190, 4050498; 595195, 4050513; 595192, 4050538; 595193, 4050538; 595299, 4050514; 595411, 4050490; 595535, 4050334; 595574, 4050254; 595621, 4050215; 595661, 4050192; 595699, 4050182; 595718, 4050203; 595735, 4050221; 595728, 4050282; 595737, 4050294; 595873, 4050317; 595931, 4050395; 595865, 4050456; 595764, 4050427; 595708, 4050454; 595647, 4050505; 595634, 4050565; 595491, 4050688; 595495.370, 4050690.280; 595496.493, 4050690.314; 595508.038, 4050690.905; 595520.374, 4050691.863; 595533.349, 4050693.238; 595546.186, 4050694.972; 595557.882, 4050696.879; 595569.523, 4050699.092; 595580.577, 4050701.486; 595593.215, 4050704.582; 595607.463, 4050708.587; 595620.527, 4050713.299; 595632.385, 4050718.427; 595645.083, 4050724.897; 595657.059, 4050732.019; 595668.185, 4050739.632; 595678.590, 4050747.738; 595687.611, 4050755.653; 595697.731, 4050765.724; 595707.498, 4050775.246; 595717.389, 4050784.009; 595727.809, 4050792.397; 595739.767, 4050801.074; 595750.271, 4050807.692; 595761.985, 4050814.082; 595774.723, 4050820.556; 595787.346, 4050826.503; 595803.552, 4050833.485; 595819.808, 4050840.511; 595835.796, 4050846.786; 595850.746, 4050852.106; 595863.800, 4050856.332; 595878.326, 4050860.141; 595893.138, 4050862.843; 595909.227, 4050864.579; 595923.931, 4050865.100; 595940.058, 4050864.509; 595955.311, 4050861.023; 595973.024, 4050856.090; 595989.675, 4050850.553; 596006.554, 4050844.003; 596020.972, 4050837.619; 596035.257, 4050830.854; 596050.951, 4050824.504; 596064.953, 4050819.844; 596081.870, 4050815.399; 596091.460, 4050813.429; 596095.984, 4050813.012; 596102.710, 4050812.958; 596111.615, 4050813.930; 596118.244, 4050815.455; 596127.446, 4050818.812; 596132.377, 4050821.278; 596136.011, 4050823.439; 596140.866, 4050832.937; 596142.583, 4050836.764; 596411, 4050626; 596492, 4050567; 596500, 4050556; 596506, 4050545; 596510, 4050531; 596514, 4050505; 596513, 4050484; 596493, 4050421; 596437, 4050262; 596404, 4050199; 596364, 4050134; 596358, 4050092; 596367, 4050043; 596370, 4050008; 596348, 4049956; 596334, 4049923; 596339, 4049885; 596365, 4049836; 596420, 4049812; 596418, 4049789; 596387, 4049778; 596366, 4049762; 596351, 4049725; 596344, 4049706; 596332, 4049696; 596302, 4049685; 596300, 4049646; 596303, 4049619; 596311, 4049598; 596310, 4049570; 596299, 4049556; 596283, 4049542; 596269, 4049528; 596260, 4049516; 596258, 4049492; 596272, 4049460; 596282, 4049429; 596299, 4049389; 596298, 4049372; 596274, 4049352; 596258, 4049329; 596166, 4049101; returning to 596121, 4048995.

(iv) Subunit 6a (Pescadero Canyon portion): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 596202.421, 4048820.398; 596202.251, 4048823.977; 596201.106, 4048831.050; 596198.745, 4048837.881; 596195.323, 4048844.166; 596189.449, 4048851.720; 596181.453, 4048858.259; 596174.403, 4048861.914; 596168.285, 4048863.980; 596159.736, 4048865.409; 596150.776, 4048866.138; 596139.514, 4048869.809; 596131.375, 4048875.207; 596125.615, 4048881.289; 596120.666, 4048889.708; 596116.970, 4048898.758; 596115.407, 4048904.538; 596115.082, 4048907.507; 596114.880, 4048914.971; 596115.601, 4048920.919; 596117.073, 4048928.699; 596119.738, 4048940.221; 596121.820, 4048947.778; 596123.208, 4048952.171; 596149, 4048917; 596171, 4048889; 596214, 4048863; 596295, 4048862; 596318, 4048787; 596334, 4048726; 596363, 4048682; 596382, 4048673; 596405, 4048693; 596418, 4048724; 596441, 4048708; 596482, 4048660; 596510, 4048642; 596536, 4048625; 596561, 4048606; 596597, 4048578; 596651, 4048555; 596671, 4048551; 596715, 4048542; 596829, 4048531; 596878, 4048531; 596924.858, 4048521.004; 596936.135, 4048509.789; 596944.053, 4048516.909; 596953, 4048515; 597028, 4048494; 597074, 4048468; 597083, 4048454; 597096, 4048441; 597102, 4048435; 597103.186, 4048434.138; 597103.230, 4048432.889; 597122.598, 4048407.776; 597125.173, 4048401.474; 597125.117, 4048396.220; 597123.538, 4048391.757; 597121.041, 4048388.365; 597119.042, 4048386.644; 597115.317, 4048384.679; 597106.016, 4048382.581; 597099.373, 4048380.712; 597089.681, 4048377.084; 597078.307, 4048371.300; 597062.710, 4048362.620; 597050.160, 4048348.145; 597042.036, 4048336.655; 597037.007, 4048327.373; 597034.190, 4048320.921; 597026.181, 4048298.414; 597026, 4048298; 597008, 4048250; 596999, 4048220; 596952, 4048162; 596941, 4048146; 596932, 4048120; 596924, 4048090; 596907, 4048062; 596894, 4048049; 596833, 4048022; 596756, 4048000; 596740, 4047994; 596728, 4047994; 596689, 4047954; 596685, 4047941; 596674, 4047920; 596662, 4047900; 596648, 4047881; 596634, 4047862; 596542, 4047755; 596522, 4047739; 596506, 4047734; 596458, 4047725; 596449, 4047723; 596433, 4047716; 596297, 4047645; 596283, 4047635; 596220, 4047585; 596204, 4047568; 596197, 4047557; 596190, 4047539; 596163, 4047442; 596143, 4047425; 596133, 4047420;

596115, 4047406; 596103, 4047389; 596086, 4047360; 596074, 4047347; 596049, 4047337; 596017, 4047368; 595973, 4047400; 595910, 4047426; 595872, 4047443; 595867, 4047523; 595864, 4047594; 595870, 4047667; 595880, 4047728; 595887.445, 4047772.169; 595896.900, 4047807.905; 595923.997, 4047835.258; 595982.485, 4047890.602; 596001.110, 4047917.832; 596009.167, 4047943.965; 596008.899, 4047989.340; 596008.385, 4048016.218; 595998.060, 4048035.162; 595980.074, 4048045.653; 595962.288, 4048046.253; 595934.059, 4048032.734; 595906.862, 4048017.073; 595878.916, 4047992.590; 595843.991, 4047964.452; 595820.544, 4047955.446; 595781.236, 4047949.719; 595706.444, 4047946.467; 595701, 4047953; 595605, 4048051; 595588, 4048057; 595526, 4048090; 595504, 4048118; 595501, 4048132; 595502, 4048132; 595524, 4048140; 595565, 4048157; 595630, 4048169; 595634, 4048198; 595676, 4048233; 595673, 4048267; 595698, 4048322; 595840, 4048309; 595893, 4048311; 595982, 4048326; 595982, 4048327; 595973, 4048417; 595974, 4048417; 596135, 4048438; 596251, 4048453; 596208, 4048594; 596220, 4048604; 596231, 4048624; 596230, 4048641; 596215, 4048727; 596218, 4048782; 596209, 4048811; returning to 596202.421, 4048820.

(v) Subunit 6a (portion between Sunridge Road and Spruance Road): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 595662.607, 4048782.410; 595606.350, 4048793.214; 595593.683, 4048794.978; 595581.024, 4048795.981; 595576.755, 4048796.238; 595555.424, 4048796.153; 595501.980, 4048792.589; 595494.224, 4048791.208; 595486.477, 4048789.065; 595479.043, 4048786.088; 595472.075, 4048782.353; 595464.363, 4048777.086; 595456.518, 4048769.991; 595445.525, 4048758.212; 595435.299, 4048745.984; 595425.842, 4048733.156; 595417, 4048719.878; 595406.232, 4048701.550; 595399.076, 4048687.299; 595394.765, 4048677.576; 595363.443, 4048602.869; 595358.414, 4048589.176; 595349.695, 4048563.960; 595302.138, 4048562.504; 595301.073, 4048566.064; 595297.396, 4048581.566; 595294.480, 4048597.228; 595292.475, 4048613.053; 595291.233, 4048628.962; 595290.750, 4048644.956; 595291.183, 4048660.884; 595291.979, 4048671.483; 595293.081, 4048682.085; 595294.641, 4048692.616; 595296.926, 4048706.356; 595298.350, 4048715.285; 595299.470, 4048724.287; 595300.132, 4048733.285; 595300.642, 4048742.281; 595300.693, 4048751.348; 595300.573, 4048762.165; 595301.386, 4048771.317; 595305.088, 4048780.957; 595309.740, 4048787.409; 595316.836, 4048793.277; 595326.841, 4048797.960; 595339.744, 4048802.370; 595357.214, 4048807.211; 595374.849, 4048810.835; 595397.370, 4048813.599; 595411.528, 4048814.747; 595424.137, 4048818.163; 595434.605, 4048823.670; 595484.115, 4048850.827; 595495.005, 4048858.109; 595502.701, 4048864.899; 595506.769, 4048869.134; 595512.925, 4048877.278; 595517.565, 4048884.797; 595521.729, 4048894.062; 595538.984, 4048938.367; 595541.571, 4048946.013; 595543.020, 4048952.734; 595543.674, 4048962.493; 595542.650, 4048972.310; 595539.803, 4048981.725; 595534.506, 4048992.180; 595527.091, 4049001.317; 595516.619, 4049011.257; 595500.614, 4049025.555; 595483.704, 4049038.929; 595460.208, 4049055.429; 595441.798, 4049066.653; 595430.144, 4049073.305; 595423.232, 4049078.257; 595412.777, 4049088.386; 595406.135, 4049094.828; 595402.263, 4049100.499; 595400.808, 4049107.949; 595402.256, 4049114.822; 595406, 4049121; 595417, 4049126; 595438, 4049124; 595459, 4049129; 595480, 4049130; 595500, 4049127; 595517, 4049127; 595527, 4049130; 595546, 4049127; 595578, 4049111; 595609, 4049086; 595612, 4049077; 595622, 4049064; 595638, 4049045; 595658, 4049031; 595679, 4049021; 595703, 4049013; 595731, 4049004; 595754, 4048992; 595761.777, 4048985.026; 595769.192, 4048975.966; 595773.393, 4048968.089; 595775.156, 4048960.261; 595774.489, 4048951.721; 595771.678, 4048944.147; 595767.928, 4048938.772; 595761.284, 4048933.289; 595755.383, 4048929.567; 595748.428, 4048924.690; 595741.782, 4048919.436; 595733.484, 4048911.953; 595727.456, 4048905.944; 595720.990, 4048898.177; 595715.891, 4048890.806; 595711.118, 4048881.535; 595706.533, 4048868.989; 595704.225, 4048857.307; 595703.595, 4048845.414; 595704.641, 4048833.541; 595707.208, 4048821.913; 595710.348, 4048813.567; 595713.185, 4048805.066; 595713.125, 4048796.760; 595710.460, 4048789.721; 595706.253, 4048784.418; 595698.078, 4048779.603; 595689.711, 4048778.368; 595677.796, 4048779.563; returning to 595662.607, 4048782.

(vi) Subunit 6a (portion west of Spruance Road): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 595323, 4049123; 595368.117, 4049101.720; 595382.240, 4049092.277; 595410.579, 4049065.011; 595418.415, 4049059.232; 595432.679, 4049050.857; 595444.489, 4049043.827; 595456.001, 4049036.335; 595467.211, 4049028.460; 595483.502, 4049015.918; 595493.961, 4049007.120; 595504.272, 4048997.940; 595515.056, 4048987.393; 595520.624, 4048979.912; 595524.072, 4048971.342; 595525.218, 4048964.116; 595524.719, 4048954.207; 595521.124, 4048943.526; 595504.298, 4048899.506; 595499.078, 4048889.315; 595491.417, 4048879.402; 595484.782, 4048873.157; 595475.253, 4048866.804; 595424.286, 4048839.148; 595418.003, 4048835.465; 595406.606, 4048832.596; 595395.796, 4048831.866; 595381.337, 4048830.335; 595367.040, 4048828.043; 595348.039, 4048823.794; 595338.773, 4048821.253; 595324.957, 4048816.757; 595314.336, 4048812.602; 595302.378, 4048805.459; 595294.389, 4048797.600; 595286.759, 4048784.944; 595283.230, 4048773.401; 595282.287, 4048762.267; 595282.561, 4048751.299; 595282.244, 4048738.649; 595281.317, 4048726.144; 595279.779, 4048713.631; 595276.920, 4048696.686; 595275.215, 4048685.544; 595273.573, 4048668.688; 595272.604, 4048646.202; 595272.943, 4048629.292; 595274.197, 4048612.469; 595275.541, 4048601.208; 595277.188, 4048590.103; 595279.292, 4048579.003; 595281.851, 4048568.060; 595283.456, 4048561.932; 595253, 4048561; 595225, 4048650; 595206, 4048683; 595203, 4048704; 595204, 4048727; 595225, 4048781; 595225, 4048914; 595222, 4048941; 595134, 4049009; 595111, 4049027; 595081, 4049069; 595056, 4049144; 595117, 4049145; 595138, 4049144; 595159, 4049140; 595178, 4049134; 595194, 4049129; 595211, 4049127; 595228, 4049128; 595275, 4049132; 595292, 4049131; 595309, 4049128; returning to 595323, 4049123.

(vii) Note: Unit 6a is depicted on Map 3 in paragraph (12)(xiv), and in detail on Map 4 in paragraph (12)(xv) of this entry.

(viii) Subunit 6b (east portion): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 593541.388, 4048770.432; 593510.848, 4048805.177; 593532.068, 4048818.876; 593548.960, 4048826.486; 593570.875, 4048833.182; 593586.397, 4048837.747; 593608.312, 4048838.660; 593624.139, 4048838.965; 593639.357, 4048836.834; 593659.141, 4048830.747; 593680.751, 4048822.529; 593727.015, 4048798.788; 593782.106, 4048772.004; 593790.904, 4048768.133; 593778.000, 4048727.000; 593772.946, 4048696.679; 593772.083, 4048696.721; 593715.333, 4048703.457; 593701.565, 4048705.802; 593683.913, 4048711.031; 593675.394, 4048714.531; 593667.133, 4048718.602; 593659.167, 4048723.224; 593651.533, 4048728.376; 593634.547, 4048741.500; 593627.799, 4048746.427; 593624.257, 4048748.773; 593616.962, 4048753.136; 593609.188, 4048757.152; 593605.208, 4048758.975; 593597.085,

4048762.239; 593592.951, 4048763.677; 593588.773, 4048764.984; 593584.556, 4048766.159; 593580.298, 4048767.201; 593575.860, 4048768.137; 593571.387, 4048768.928; 593566.891, 4048769.572; 593562.377, 4048770.069; 593557.849, 4048770.418; 593548.770, 4048770.669; 593544.229, 4048770.572; returning to 593541.388, 4048770.432.

(ix) Subunit 6b (west portion): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 593522.950, 4048768.330; 593488.310, 4048763.587; 593468.619, 4048760.890; 593462.417, 4048760.143; 593456.341, 4048759.609; 593450.817, 4048759.302; 593488.543, 4048788.440; 593498.544, 4048796.096; returning to 593522.950, 4048768.330.

(x) Subunit 6c (east portion): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 593678.031, 4049656.997; 593676.816, 4049655.549; 593657.430, 4049624.243; 593645.847, 4049580.582; 593642.129, 4049535.973; 593642.297, 4049535.749; 593636.462, 4049526.819; 593633.154, 4049523.033; 593630.739, 4049520.709; 593628.167, 4049518.558; 593625.453, 4049516.590; 593622.609, 4049514.816; 593618.129, 4049512.535; 593613.436, 4049510.732; 593610.214, 4049509.805; 593606.936, 4049509.104; 593501.928, 4049490.433; 593498.284, 4049510.927; 593545.854, 4049574.412; 593548.648, 4049578.141; 593566.979, 4049609.782; 593647.949, 4049681.627; returning to 593678.031, 4049656.997.

(xi) Subunit 6c (west portion): From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 593686.191, 4049823.525; 593718.176, 4049820.816; 593726.510, 4049844.038; 593779, 4049814.000; 593781.227, 4049812.692; 593779.785, 4049811.940; 593744.860, 4049740.544; 593707.564, 4049692.197; 593617.531, 4049767.523; 593559.935, 4049774.021; 593531, 4049764.000; 593486, 4049731.000; 593474, 4049707.000; 593460, 4049690.000; 593428, 4049662.000; 593408, 4049649.000; 593383, 4049632.000; 593351.999, 4049611.999; 593334.206, 4049625.645; 593326.515, 4049621.339; 593318.546, 4049617.573; 593306.155, 4049612.974; 593297.659, 4049610.629; 593284.662, 4049608.222; 593271.487, 4049607.167; 593258.273, 4049607.477; 593245.162, 4049609.148; 593232.293, 4049612.162; 593219.803, 4049616.488; 592978.342, 4049724.383; 592966.840, 4049728.949; 592959.041, 4049731.592; 592954.985, 4049732.755; 592941.323, 4049735.664; 592939, 4049733.000; 592930, 4049733.000; 592918, 4049760.000; 592920, 4049789.000; 592936.305, 4049827.951; 593018.581, 4049826.666; 593098.417, 4049780.812; 593207.036, 4049823.766; 593283.323, 4049815.508; 593358.944, 4049812.254; 593444.705, 4049788.911; 593458.448, 4049795.812; 593602.831, 4049855.126; 593635.133, 4049863.106; 593661.279, 4049846.810; returning to 593686.191, 4049823.525.

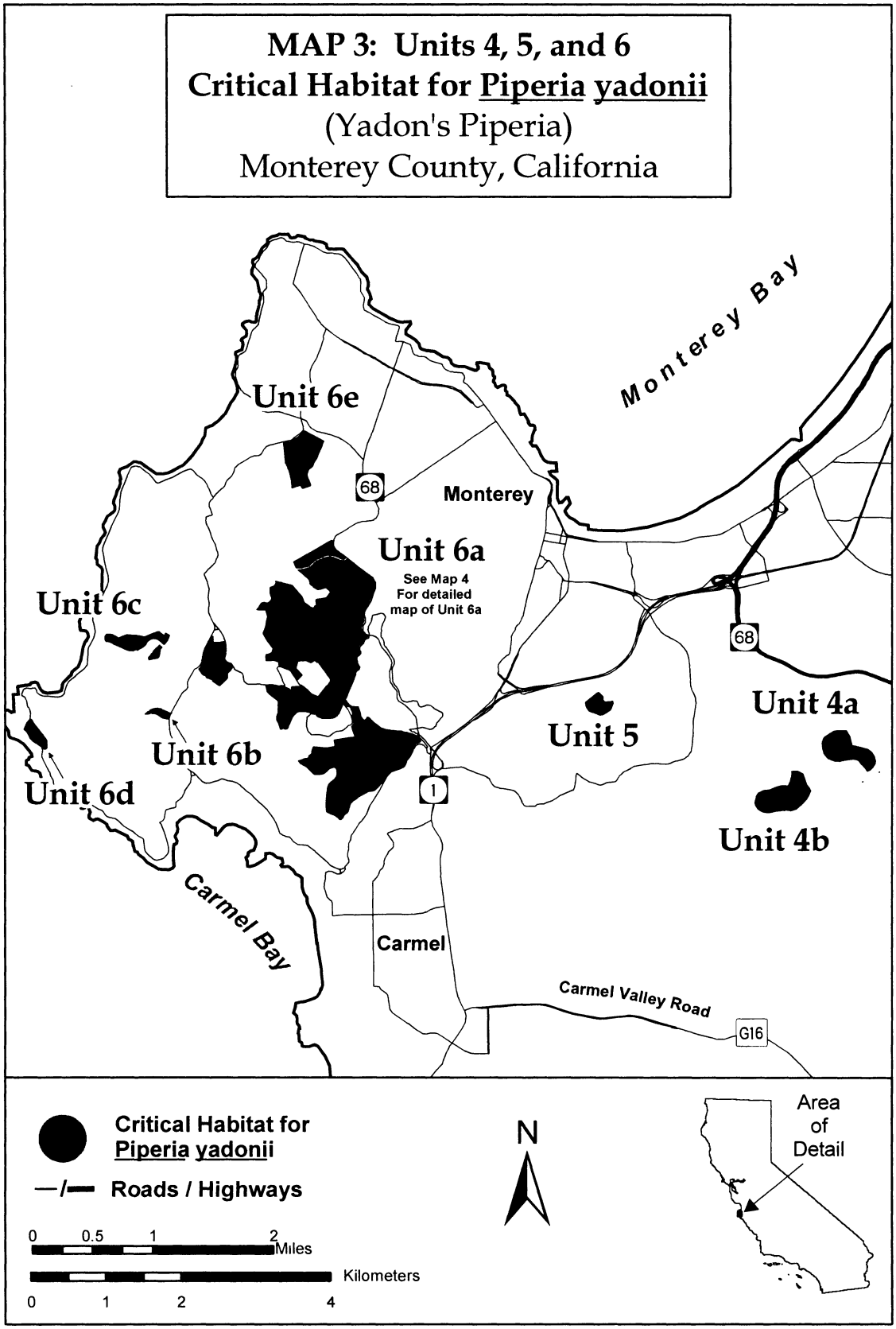
(xii) Subunit 6d: From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 591851, 4048564; 591855, 4048576; 591861, 4048580; 591868, 4048583; 591873, 4048588; 591879, 4048594; 591884, 4048602; 591887, 4048610; 591889, 4048617; 591889, 4048625; 591891, 4048632; 591918, 4048685; 591925, 4048690; 591925, 4048690; 591935, 4048688; 591945, 4048672; 591953, 4048660; 591961, 4048648; 591969, 4048636; 592120, 4048437; 592141, 4048411; 592144, 4048397; 592144, 4048351; 592144, 4048317; 592136, 4048297; 592116, 4048287; 592116, 4048287; 592116, 4048287; 592096, 4048293; 592073, 4048322; 592062, 4048334; 592050, 4048344; 592038, 4048354; 591992, 4048388; 591951, 4048418; 591951, 4048418; 591933, 4048448; 591931, 4048452; 591928, 4048456; 591924, 4048461; 591920, 4048466; 591920, 4048466; 591912, 4048476; 591908, 4048485; 591907, 4048489; 591905, 4048496; 591902, 4048503; 591899, 4048510; 591895, 4048517; 591891, 4048523; 591886, 4048529; 591882, 4048534; 591877, 4048538; 591872, 4048543; 591866, 4048548; 591860, 4048552; 591855, 4048556; returning to 591851, 4048564.

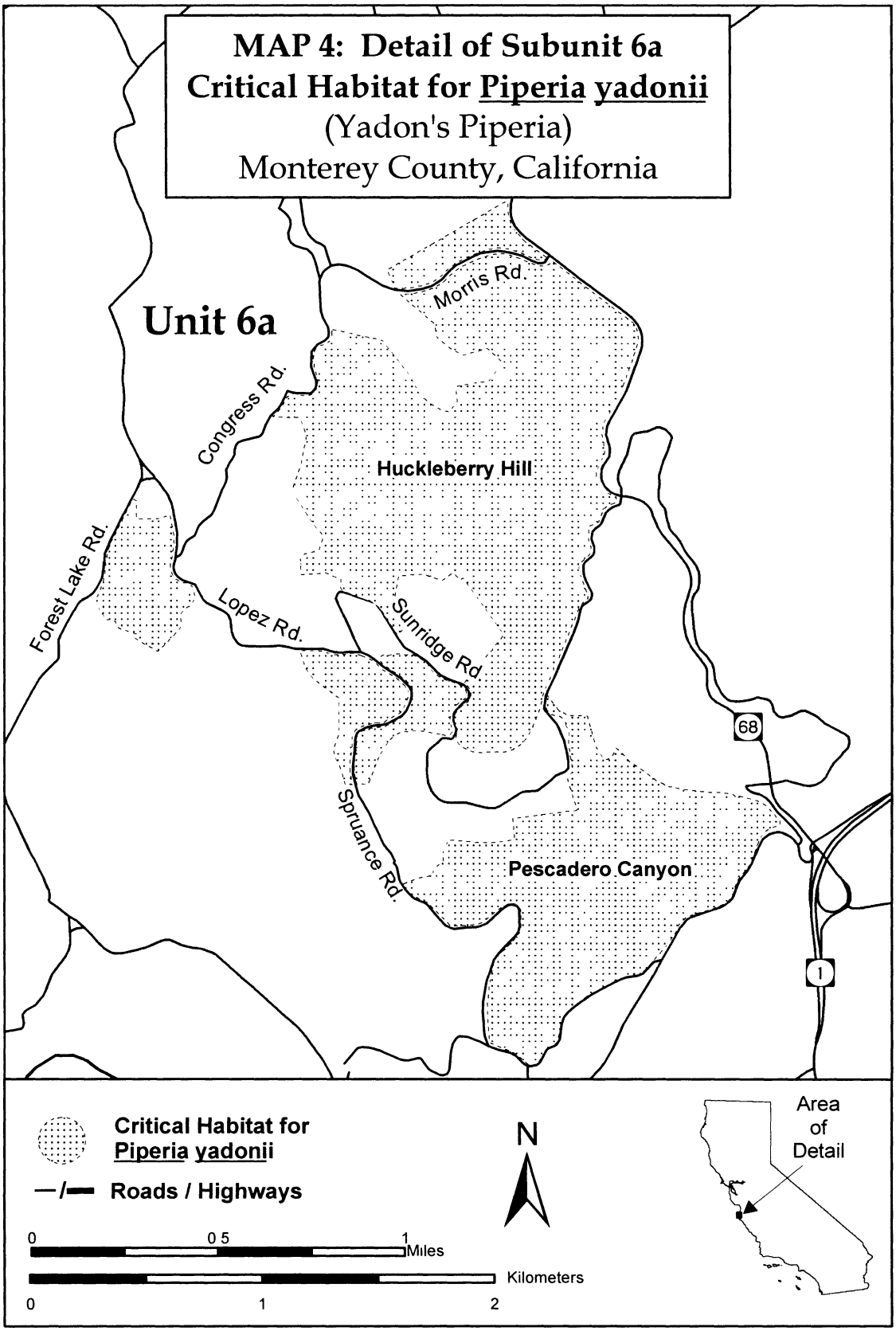
(xiii) Subunit 6e: From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10 NAD83 coordinates (E, N): 595552, 4051784; 595527, 4051833; 595413, 4051790; 595404, 4051837; 595404, 4051843; 595404, 4051846; 595403, 4051858; 595401, 4051873; 595399, 4051888; 595397, 4051903; 595395, 4051917; 595392, 4051932; 595389, 4051947; 595386, 4051961; 595382, 4051976; 595379, 4051990; 595375, 4052005; 595371, 4052019; 595370, 4052021; 595370, 4052022; 595366, 4052033; 595362, 4052047; 595357, 4052061; 595352, 4052075; 595346, 4052089; 595341, 4052103; 595334, 4052116; 595332, 4052121; 595330, 4052124; 595325, 4052130; 595324, 4052130; 595323, 4052138; 595292, 4052402; 595329, 4052407; 595339, 4052409; 595340, 4052409; 595342, 4052409; 595344, 4052409; 595345, 4052409; 595347, 4052409; 595348, 4052409; 595349, 4052409; 595351, 4052409; 595352, 4052409; 595354, 4052409; 595356, 4052409; 595358, 4052409; 595359, 4052409; 595361, 4052409; 595363, 4052409; 595365, 4052409; 595366, 4052409; 595367, 4052410; 595368, 4052410; 595370, 4052410; 595372, 4052410; 595373, 4052411; 595375, 4052411; 595377, 4052412; 595379, 4052412; 595380, 4052412; 595382, 4052413; 595384, 4052413; 595385, 4052414; 595387, 4052415; 595388, 4052415; 595390, 4052416; 595392, 4052416; 595393, 4052417; 595395, 4052418; 595397, 4052419; 595398, 4052419; 595400, 4052420; 595401, 4052421; 595403, 4052422; 595404, 4052423; 595406, 4052424; 595407, 4052425; 595409, 4052426; 595410, 4052427; 595412, 4052428; 595413, 4052429; 595414, 4052429; 595425, 4052438; 595487, 4052473; 595545, 4052519; 595569, 4052552; 595574, 4052559; 595785, 4052448; 595838, 4052420; 595829, 4052400; 595798, 4052339; 595762, 4052253; 595751, 4052224; 595736, 4052189; 595703, 4052125; 595688, 4052091; 595683, 4052085; 595672, 4052071; 595634, 4052047; 595633, 4052045; 595632, 4052043; 595631, 4052041; 595630, 4052039; 595628, 4052037; 595627, 4052035; 595626, 4052033; 595625, 4052030; 595624, 4052028; 595623, 4052026; 595622, 4052024; 595621, 4052021; 595621, 4052019; 595620, 4052017; 595619, 4052015; 595618, 4052012; 595618, 4052010; 595617, 4052008; 595616, 4052005; 595616, 4052003; 595615, 4052001; 595615, 4051998; 595614, 4051996; 595614, 4051993; 595614, 4051991; 595613, 4051989; 595613, 4051986; 595613, 4051984; 595613, 4051981; 595612, 4051979; 595612, 4051977; 595612, 4051974; 595612, 4051972; 595612, 4051969; 595612, 4051967; 595613, 4051964; 595613, 4051962; 595613, 4051960; 595613, 4051957; 595613, 4051955; 595614, 4051952; 595614, 4051950; 595614, 4051948; 595615, 4051945; 595615, 4051943; 595616, 4051940; 595617, 4051938; 595617, 4051936; 595618, 4051933; 595618, 4051931; 595619, 4051929; 595620, 4051926; 595621, 4051924; 595625, 4051914; 595629, 4051904; 595634, 4051892; 595638, 4051882; 595643, 4051871; 595655, 4051846; 595657, 4051842; 595663, 4051824; returning to 595552, 4051784.

(xiv) Note: Map of Unit 6 (Map 3) follows:

(xv) Note: Detail map of Subunit 6a (Map 4) follows:

BILLING CODE 4310–55–P


MAP 3: Units 4, 5, and 6
Critical Habitat for Piperia yadonii
(Yadon's Piperia)
Monterey County, California
Monterey Bay
Unit 6e
68
Monterey
Unit 6a
See Map 4
For detailed
map of Unit 6a
Unit 6c
68
Unit 4a
Unit 5
Unit 6b
Unit 6d
1
Unit 4b
Carmel Bay
Carmel
Carmel Valley Road
G16
Critical Habitat for
Piperia yadonii
Roads / Highways
0 0.5 1 2 Miles
0 1 2 4 Kilometers
N
Area
of
Detail



BILLING CODE 4310–55–C

(13) Unit 7: Point Lobos Ranch, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangles Monterey and Soberanes Point. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 595261, 4040950; 595269, 4041010; 595302, 4041071; 595344, 4041106; 595399, 4041136; 595410, 4041165; 595402, 4041291; 595387, 4041367; 595377, 4041400; 595365, 4041437; 595365, 4041463; 595389, 4041491; 595453, 4041513; 595516, 4041504; 595570, 4041472; 595597, 4041500; 595597, 4041536; 595602, 4041585; 595627, 4041649; 595635, 4041663; 595716, 4041696; 595759, 4041700; 595783, 4041693; 595801, 4041670; 595825, 4041613; 595827, 4041585; 595813, 4041551; 595807, 4041531; 595812, 4041518; 595844, 4041470; 595915, 4041508; 595889, 4041596; 595951, 4041638; 595966, 4041648; 595986, 4041664; 595850, 4041803; 595867, 4041802; 595891, 4041808; 595893, 4041869; 595904, 4041919; 595915, 4041930; 595910, 4041935; 595945, 4041988; 595990, 4042022; 596063, 4042063; 596142, 4042098; 596156, 4042104; 596211, 4042114; 596241, 4042109; 596269, 4042011; 596275, 4041978; 596276, 4041975; 596317, 4041764; 596343, 4041583; 596373, 4041510; 596515, 4041436; 596694, 4041433; 596927, 4041428; 597048, 4041584; 597068, 4041628; 597136, 4041714; 597204, 4041766; 597235, 4041783; 597291, 4041803; 597332, 4041812; 597381, 4041807; 597425, 4041787; 597461, 4041754; 597484, 4041711; 597492, 4041663; 597484, 4041614; 597467, 4041579; 597441, 4041550; 597408, 4041528; 597363, 4041511; 597341, 4041491; 597323, 4041415; 597248, 4041313; 597288, 4041280; 597098, 4041279; 597103, 4041079; 597060, 4041079; 597045, 4041092; 596996, 4041118; 596889, 4041130; 596702, 4041138; 596646, 4041140; 596553, 4041137; 596503, 4041119; 596451, 4041086; 596363, 4041006; 596211, 4040900; 596003, 4040843; 595913, 4040829; 595905, 4040827; 595884, 4040824; 595865, 4040825; 595753, 4040829; 595629, 4040826; 595611, 4040841; 595574, 4040832; 595575, 4040825; 595539, 4040822; 595537, 4040822; 595497, 4040858; 595465, 4040822; 595393, 4040831; 595371, 4040840; 595366, 4040838; 595297, 4040891; returning to 595261, 4040950.

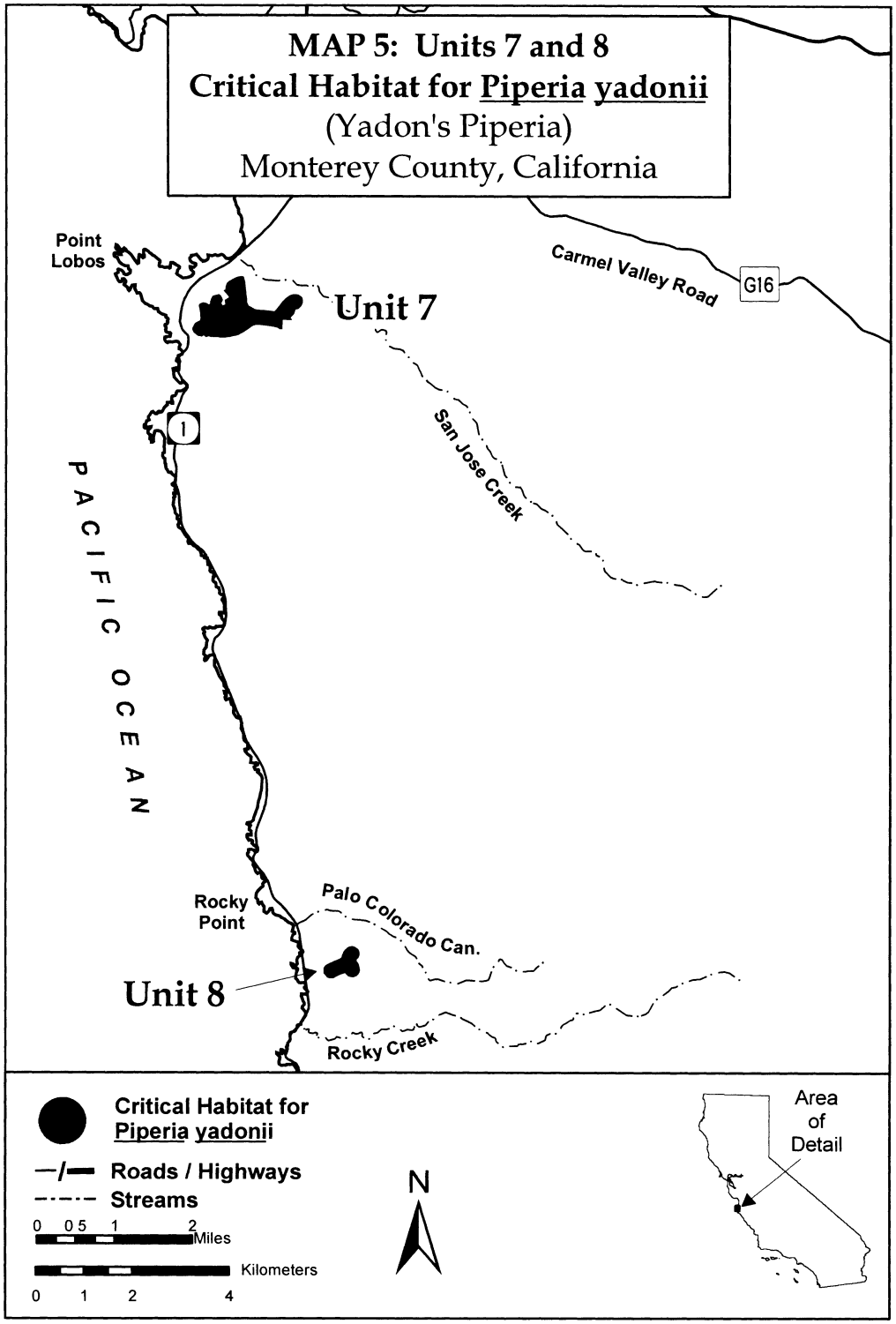
(ii) Note: Unit 7 is depicted on Map 5 in paragraph (14)(ii) of this entry.

BILLING CODE 4310–55–P

(14) Unit 8: Palo Colorado, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Soberanes Point. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 598818, 4027785; 598823, 4027824; 598834, 4027852; 598855, 4027884; 598877, 4027904; 599017, 4027985; 599111, 4028022; 599176, 4028075; 599179, 4028121; 599198, 4028182; 599233, 4028238; 599262, 4028268; 599316, 4028304; 599373, 4028315; 599431, 4028304; 599479, 4028271; 599498, 4028249; 599518, 4028204; 599522, 4028146; 599508, 4028099; 599476, 4028056; 599471, 4028019; 599511, 4027964; 599527, 4027921; 599543, 4027880; 599551, 4027832; 599546, 4027793; 599531, 4027757; 599514, 4027733; 599484, 4027707; 599430, 4027685; 599362, 4027687; 599326, 4027702; 599282, 4027741; 599266, 4027766; 599135, 4027707; 599026, 4027647; 598988, 4027637; 598949, 4027637; 598893, 4027655; 598855, 4027686; 598830, 4027728; 598821, 4027756; returning to 598818, 4027785.

(ii) Note: Map of Units 7 and 8 (Map 5) follows:



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Dated: October 5, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–5136 Filed 10–23–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
October 24, 2007

Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Default Investment Alternatives Under Participant Directed Individual Account Plans; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB10

Default Investment Alternatives Under Participant Directed Individual Account Plans

AGENCY: Employee Benefits Security Administration.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that implements recent amendments to title I of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of the Pension Protection Act of 2006, Public Law 109–280, under which a participant in a participant directed individual account pension plan will be deemed to have exercised control over assets in his or her account if, in the absence of investment directions from the participant, the plan invests in a qualified default investment alternative. A fiduciary of a plan that complies with this final regulation will not be liable for any loss, or by reason of any breach, that occurs as a result of such investments. This regulation describes the types of investments that qualify as default investment alternatives under section 404(c)(5) of ERISA. Plan fiduciaries remain responsible for the prudent selection and monitoring of the qualified default investment alternative. The regulation conditions relief upon advance notice to participants and beneficiaries describing the circumstances under which contributions or other assets will be invested on their behalf in a qualified default investment alternative, the investment objectives of the qualified default investment alternative, and the right of participants and beneficiaries to direct investments out of the qualified default investment alternative. This regulation will affect plan sponsors and fiduciaries of participant directed individual account plans, the participants and beneficiaries in such plans, and the service providers to such plans.

DATES: This final rule is effective on December 24, 2007.

FOR FURTHER INFORMATION CONTACT: Lisa M. Alexander, Kristen L. Zarenko, or Katherine D. Lewis, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

With the enactment of the Pension Protection Act of 2006 (Pension Protection Act), section 404(c) of ERISA was amended to provide relief afforded by section 404(c)(1) to fiduciaries that invest participant assets in certain types of default investment alternatives in the absence of participant investment direction. Specifically, section 624(a) of the Pension Protection Act added a new section 404(c)(5) to ERISA. Section 404(c)(5)(A) of ERISA provides that, for purposes of section 404(c)(1) of ERISA, a participant in an individual account plan shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant, are invested by the plan in accordance with regulations prescribed by the Secretary of Labor. Section 624(a) of the Pension Protection Act directed that such regulations provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both. In the Department's view, this statutory language provides the stated relief to fiduciaries of any participant directed individual account plan that complies with its terms and with those of the Department's regulation under section 404(c)(5) of ERISA. The relief afforded by section 404(c)(5), therefore, is not contingent on a plan being an ''ERISA 404(c) plan'' or otherwise meeting the requirements of the Department's regulations at § 2550.404c–1. The amendments made by section 624 of the Pension Protection Act apply to plan years beginning after December 31, 2006.

On September 27, 2006, the Department, exercising its authority under section 505 of ERISA and consistent with section 624 of the Pension Protection Act, published a notice of proposed rulemaking in the **Federal Register** (71 FR 56806) that, upon adoption, would implement the provisions of ERISA section 404(c)(5). The notice included an invitation to interested persons to comment on the proposal. In response to this invitation, the Department received over 120 written comments from a variety of parties, including plan sponsors and fiduciaries, plan service providers, financial institutions, and employee benefit plan industry representatives. Submissions are available for review under Public Comments on the Laws & Regulations page of the Department's Employee Benefits Security Administration Web site at *http://www.dol.gov/ebsa*.

Set forth below is an overview of the final regulation, along with a discussion of the public comments received on the proposal.

B. Overview of Final Rule

Scope of the Fiduciary Relief

Paragraph (a)(1) of § 2550.404c–5, like the proposal, generally describes the scope of the regulation and the fiduciary relief afforded by ERISA section 404(c)(5), under which a participant who does not give investment directions will be treated as exercising control over his or her account with respect to assets that the plan invests in a qualified default investment alternative. Paragraph (a)(2) of § 2550.404c–5, also like the proposal, makes clear that the standards set forth in the regulation apply solely for purposes of determining whether a fiduciary meets the requirements of the regulation. These standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under ERISA with respect to the investment of assets on behalf of a participant or beneficiary in an individual account plan who fails to give investment directions. As recognized by the Department in the preamble to the proposal, investments in money market funds, stable value products and other capital preservation investment vehicles may be prudent for some participants or beneficiaries even though such investments themselves may not generally constitute qualified default investment alternatives for purposes of the regulation. The Department further notes that such investments, while not themselves qualified default investment alternatives for purposes of investments made following the effective date of this regulation, may nonetheless constitute part of the investment portfolio of a qualified default investment alternative.

Paragraph (b) of § 2550.404c–5 defines the scope of the fiduciary relief provided. Paragraph (b)(1) of the proposal provided that, subject to certain exceptions, a fiduciary of an individual account plan that permits participants and beneficiaries to direct the investment of assets in their accounts and that meets the conditions of the regulation, as set forth in paragraph (c) of § 2550.404c–5, shall not be liable for any loss, or by reason of any breach under part 4 of title I of ERISA, that is the direct and necessary result of investing all or part of a

participant's or beneficiary's account in a qualified default investment alternative, or of investment decisions made by the entity described in paragraph (e)(3) in connection with the management of a qualified default investment alternative. The Department has revised paragraph (b)(1) of the final regulation to clarify that a fiduciary of an individual account plan that permits participants and beneficiaries to direct the investment of assets in their accounts and that meets the conditions of the regulation, as set forth in paragraph (c) of § 2550.404c–5, shall not be liable for any loss under part 4 of title I, or by reason of any breach, that is the direct and necessary result of investing all or part of a participant's or beneficiary's account in any qualified default investment alternative within the meaning of paragraph (e), or of investment decisions made by the entity described in paragraph (e)(3) in connection with the management of a qualified default investment alternative. The phrase ''any qualified default investment alternative'' in the final regulation is intended to make clear that a fiduciary will be afforded relief without regard to which type of qualified default investment alternative the fiduciary selects, provided that the fiduciary prudently selects the particular product, portfolio or service, and meets the other conditions of the regulation.

Some commenters asked whether the relief provided by the final regulation covers a plan fiduciary's decision regarding which of the qualified default investment alternatives will be available to a plan's participants and beneficiaries who fail to direct their investments. As long as a plan fiduciary selects any of the qualified default investment alternatives, and otherwise complies with the conditions of the rule, the plan fiduciary will obtain the fiduciary relief described in the rule. The Department believes that each of these qualified default investment alternatives is appropriate for participants and beneficiaries who fail to provide investment direction; accordingly, the rule does not require a plan fiduciary to undertake an evaluation as to which of the qualified default investment alternatives provided for in the regulation is the most prudent for a participant or the plan. However, the plan fiduciary must prudently select and monitor an investment fund, model portfolio, or investment management service within any category of qualified default investment alternatives in accordance with ERISA's general fiduciary rules. For example, a plan fiduciary that chooses an investment management service that is intended to comply with paragraph (e)(4)(iii) of the final regulation must undertake a careful evaluation to prudently select among different investment management services.

Application of General Fiduciary Standards

The scope of fiduciary relief provided by this regulation is the same as that extended to plan fiduciaries under ERISA section 404(c)(1)(B) in connection with carrying out investment directions of plan participants and beneficiaries in an ''ERISA section 404(c) plan'' as described in 29 CFR 2550.404c–1(a), although it is not necessary for a plan to be an ERISA section 404(c) plan in order for the fiduciary to obtain the relief accorded by this regulation. As with section 404(c)(1) of the Act and the regulation issued thereunder (29 CFR 2550.404c–1), the final regulation does not provide relief from the general fiduciary rules applicable to the selection and monitoring of a particular qualified default investment alternative or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses. See paragraph (b)(2) of § 2550.404c–5.

Several commenters asked the Department to provide additional guidance concerning the general fiduciary obligations of these plan fiduciaries in selecting a qualified default investment alternative. The selection of a particular qualified default investment alternative (i.e. a specific product, portfolio or service) is a fiduciary act and, therefore, ERISA obligates fiduciaries to act prudently and solely in the interest of the plan's participants and beneficiaries. A fiduciary must engage in an objective, thorough, and analytical process that involves consideration of the quality of competing providers and investment products, as appropriate. As with other investment alternatives made available under the plan, fiduciaries must carefully consider investment fees and expenses when choosing a qualified default investment alternative. See paragraph (b)(2) of § 2550.404c–5.

Paragraph (b)(3) of the final regulation has been modified to reflect changes to paragraph (e)(3)(i) regarding persons responsible for the management of a qualified default investment alternative's assets. Paragraph (b)(3) of § 2550.404c–5 makes clear that nothing in the regulation relieves any such fiduciaries from their general fiduciary duties or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses. As proposed, paragraph (b)(3) was limited to investment managers. The final regulation, at paragraph (e)(3)(i) of § 2550.404c–5, broadens the category of persons who can manage the assets of a qualified default investment alternative, thereby requiring a conforming change to paragraph (b)(3). The changes to paragraph (e)(3)(i) are discussed in detail below.

Finally, the regulation also provides no relief from the prohibited transaction provisions of section 406 of ERISA or from any liability that results from a violation of those provisions, including liability for any resulting losses. Therefore, plan fiduciaries must avoid self-dealing, conflicts of interest, and other improper influences when selecting a qualified default investment alternative. See paragraph (b)(4) of § 2550.404c–5.

Application of Final Rule to Circumstances Other Than Automatic Enrollment

Several commenters requested clarification on the extent to which the fiduciary relief provided by the final regulation will be available to plan fiduciaries for assets that are invested in a qualified default investment alternative on behalf of participants and beneficiaries in circumstances other than automatic enrollment. Consistent with the views expressed concerning the scope of the relief provided by the proposed regulation, it is the view of the Department that nothing in the final regulation limits the application of the fiduciary relief to investments made only on behalf of participants who are automatically enrolled in their plan. Like the proposal, the final regulation applies to situations beyond automatic enrollment. Examples of such situations include: The failure of a participant or beneficiary to provide investment direction following the elimination of an investment alternative or a change in service provider, the failure of a participant or beneficiary to provide investment instruction following a rollover from another plan, and any other failure of a participant to provide investment instruction. Whenever a participant or beneficiary has the opportunity to direct the investment of assets in his or her account, but does not direct the investment of such assets, plan fiduciaries may avail themselves of the relief provided by this final regulation, so long as all of its conditions have been satisfied.

Conditions for the Fiduciary Relief

Like the proposal, the final regulation contains six conditions for relief. These

conditions are set forth in paragraph (c) of the regulation.

The first condition of the final regulation, consistent with the Department's proposal, requires that assets invested on behalf of participants or beneficiaries under the final regulation be invested in a ''qualified default investment alternative.'' See § 2550.404c–5(c)(1). This condition is unchanged from the proposal.

The second condition also is unchanged from the proposal. The participant or beneficiary on whose behalf assets are being invested in a qualified default investment alternative must have had the opportunity to direct the investment of assets in his or her account but did not direct the investment of the assets. See § 2550.404c–5(c)(2). In other words, no relief is available when a participant or beneficiary has provided affirmative investment direction concerning the assets invested on the participant's or beneficiary's behalf.

The third condition continues to require that participants or beneficiaries receive information concerning the investments that may be made on their behalf. As in the proposal, the final regulation requires both an initial notice and an annual notice. The proposed regulation required an initial notice within a reasonable period of time of at least 30 days in advance of the first investment. A number of commenters explained that requiring 30 days' advance notice would preclude plans with immediate eligibility and automatic enrollment from withholding of contributions as of the first pay period. Commenters argued that plan sponsors should not be discouraged from enrolling employees in their plan on the earliest possible date.

The Department agrees that plan sponsors should not be discouraged from enrolling employees on the earliest possible date. To address this issue, the Department has modified the advance notice requirements that appeared in the proposed regulation. For purposes of the initial notification requirement, the final regulation, at paragraph (c)(3)(i), provides that the notice must be provided (A) at least 30 days in advance of the date of plan eligibility, or at least 30 days in advance of any first investment in a qualified default investment alternative on behalf of a participant or beneficiary described in paragraph (c)(2), or (B) on or before the date of plan eligibility, provided the participant has the opportunity to make a permissible withdrawal (as determined under section 414(w) of the Internal Revenue Code of 1986 (Code)).

With regard to the foregoing, the Department notes that, unlike the proposal, the final regulation measures the time period for the 30-day advance notice requirement from the date of plan eligibility to better coordinate the notice requirements with the Code provisions governing permissible withdrawals. The Department also notes that if a fiduciary fails to comply with the final regulation for a participant's first elective contribution because a notice is not provided at least 30 days in advance of plan eligibility, the fiduciary may obtain relief for later contributions with respect to which the 30-day advance notice requirement is satisfied.

In addition, while retaining the general 30-day advance notice requirement, the final regulation also permits notice ''on or before'' the date of plan eligibility if the participant is permitted to make a permissible withdrawal in accordance with 414(w) of the Code. In this regard, the Department believes that if participants are not going to be afforded the option of withdrawing their contributions without additional tax, such participants should be given notice sufficiently in advance of the contribution to enable them to opt out of plan participation.

The Department notes that the phrase in paragraph (c)(3)(i)—''or at least 30 days in advance of any first investment in a qualified default investment alternative''—is intended to accommodate circumstances other than elective contributions. For example, although fiduciary relief would not be available with respect to a fiduciary's investment of a participant or beneficiary's rollover amount from another plan into a qualified default investment alternative if the 30-day advance notice requirement is not satisfied, relief may be available when a fiduciary invests the rollover amount into a qualified default investment alternative after satisfying the notice requirement in paragraph (c)(3)(i)(A) as well as the regulation's other conditions.

Finally, the phrase—''in advance of the date of plan eligibility * * * or any first investment in a qualified default investment alternative''—is not intended to foreclose availability of relief to fiduciaries that, prior to the adoption of the final regulation, invested assets on behalf of participants and beneficiaries in a default investment alternative that would constitute a ''qualified default investment alternative'' under the regulation. In such cases, the phrase—''in advance of the date of plan eligibility * * * or any first investment''—should be read to mean the first investment with respect to which relief under the final regulation is intended to apply after the effective date of the regulation.

The timing of the annual notice requirement contained in the final regulation has not changed from the proposal. Notice must be provided within a reasonable period of time of at least 30 days in advance of each subsequent plan year. See § 2550.404c–5(c)(3)(ii). One commenter requested that the Department eliminate the annual notice requirement. The Department retained the annual notice requirement because the Pension Protection Act specifically amended ERISA to require an annual notice. Further, the Department believes that it is important to provide regular and ongoing notice to participants and beneficiaries whose assets are invested in a qualified default investment alternative to ensure that they are in a position to make informed decisions concerning their participation in their employer's plan. Several commenters supported the furnishing of an annual reminder to participants and beneficiaries that their assets have been invested in a qualified default investment alternative and that participants and beneficiaries may direct their contributions into other investment alternatives available under the plan.

Paragraph (c)(3), as proposed, provided that the required disclosures could be included in a summary plan description, summary of material modification or other notice meeting the requirements of paragraph (d), which described the content required in the notice. Some commenters expressed concern that permitting the notice requirement to be satisfied though a plan's summary plan description or summary of material modification may result in participants overlooking or ignoring information relating to their participation and the investment of contributions on their behalf. The Department is persuaded that, given the potential length and complexity of summary plan descriptions and summaries of material modifications, the furnishing of the required disclosures through a separate notice will reduce the likelihood of a participant or beneficiary missing or ignoring information about his or her plan participation and the investment of the assets in his or her account in a qualified default investment alternative. Accordingly, the final regulation, at paragraph (c)(3), has been modified to eliminate references to providing notice through a summary plan description or

summary of material modifications. The Department notes that the notice requirements of ERISA section 404(c)(5)(B) and this regulation, and the notice requirements of sections 401(k)(13)(E) and 414(w)(4) of the Code, as amended by the Pension Protection Act, are similar. Accordingly, while the final regulation provides for disclosure through a separate notice, the Department anticipates that the notice requirements of this final regulation and the notice requirements of sections 401(k)(13)(E) and 414(w)(4) of the Code could be satisfied in a single disclosure document. Further, the Department notes that nothing in the regulation should be construed to preclude the distribution of the initial or annual notices with other materials being furnished to participants and beneficiaries. In this regard, the Department recognizes that there may be cost savings that result from distributing multiple disclosures simultaneously and, to the extent that distribution costs may be charged to the accounts of individual participants and beneficiaries, efforts to minimize such costs should be encouraged.

The fourth condition of the proposed regulation required that, under the terms of the plan, any material provided to the plan relating to a participant's or beneficiary's investment in a qualified default investment alternative (e.g., account statements, prospectuses, proxy voting material) would be provided to the participant or beneficiary. See proposed regulation § 2550.404c–5(c)(4). Several commenters asked the Department to clarify whether the phrase ''under the terms of the plan'' would require plan amendments to explicitly incorporate the proposed rule's disclosure provision. Commenters suggested that paragraph (c)(4) of the proposal could be read to require that the disclosure provisions be described in the formal plan document, and the commenters suggested that it is unclear what documents would suffice to meet this condition. The phrase ''under the terms of the plan'' was merely intended to ensure that plans provide for the required pass-through of information. Taking into account both the fact that a pass-through of information is a specific condition of the regulation and the comments on this provision, the Department has concluded that the phrase is confusing and not necessary. Accordingly, the phrase ''under the terms of the plan'' has been removed from paragraph (c)(4) of the final regulation. See § 2550.404c–5(c)(4).

Commenters also requested clarification as to the material intended to be included in the reference to ''material provided to the plan'' in paragraph (c)(4). Specifically, commenters inquired whether material provided to the plan includes information within the custody of a plan service provider or the fiduciary responsible for selecting a qualified default investment alternative, and whether ''material provided to the plan'' includes aggregate, plan-level information received by the plan. Commenters also asked for clarification regarding the manner in which information shall be ''provided to the participant or beneficiary'' in paragraph (c)(4) of the proposed regulation. A number of commenters suggested that the final regulation permit disclosure of information upon request; others recommended that the disclosure requirement should be satisfied by including a statement in the notice required by paragraph (c)(3) of the proposed regulation that provides direction to a participant or beneficiary regarding where he or she can find information about the qualified default investment alternatives. Other commenters asked whether plans could make materials available to a participant or beneficiary instead of affirmatively providing materials to them.

Other commenters suggested that a participant or beneficiary on whose behalf assets are invested in a qualified default investment alternative should not be required to be furnished more material than is required to be furnished to those individuals who direct their investments. In this regard, commenters recommended that the Department apply the same standard set forth in the section 404(c) regulation for the pass-through of information to both participants who fail to direct their investments and participants who elect to direct their investments.

The Department believes that participants who fail to direct their investments should be furnished no less information than is required to be passed through to participants who elect to direct their investments under the plan. The Department also believes there is little, if any, basis for requiring defaulted participants to be furnished more information than is required to be passed through to other participants. For this reason, the Department has adopted the recommendation of those commenters that the pass-through disclosure requirements applicable to section 404(c) plans be applied to the pass-through of information under the final regulation. The Department, therefore, has modified paragraph (c)(4) to provide that a fiduciary shall qualify for the relief described in paragraph (b)(1) of the final regulation if a fiduciary provides material to participants and beneficiaries as set forth in paragraphs (b)(2)(i)(B)(1)(viii) and (ix), and paragraph (b)(2)(i)(B)(2) of the 404(c) regulation, relating to a participant's or beneficiary's investment in a qualified default investment alternative. The Department notes that, as part of a separate regulatory initiative, it is reviewing the disclosure requirements applicable to participants and beneficiaries in participant-directed individual account plans and that, to the extent that the pass-through disclosure requirements contained in § 2550.404c–1 are amended, the language of paragraph (c)(4), as modified, will ensure such amendments automatically extend to § 2550.404c–5. The Department notes, in responding to one commenter's request for clarification, that the plan's obligation to pass through information to participants or beneficiaries would be considered satisfied if the required information is furnished directly to the participant or beneficiary by the provider of the investment alternative or other third-party.

The fifth condition of the proposal required that any participant or beneficiary on whose behalf assets are invested in a qualified default investment alternative be afforded the opportunity, consistent with the terms of the plan (but in no event less frequently than once within any three month period), to transfer, in whole or in part, such assets to any other investment alternative available under the plan without financial penalty. See proposed regulation § 2550.404c–5(c)(5). This provision was intended to ensure that participants and beneficiaries on whose behalf assets are invested in a qualified default investment alternative have the same opportunity as other plan participants and beneficiaries to direct the investment of their assets, and that neither the plan nor the qualified default investment alternative impose financial penalties that would restrict the rights of participants and beneficiaries to direct their assets to other investment alternatives available under the plan. This provision was not intended to confer greater rights on participants or beneficiaries whose accounts the plan invests in qualified default investment alternatives than are otherwise available under the plan. Thus, if a plan provides participants and beneficiaries the right to direct investments on a quarterly basis, those participants and beneficiaries with investments in a qualified default investment alternative need only be afforded the opportunity to direct their

investments on a quarterly basis. Similarly, if a plan permits daily investment direction, participants and beneficiaries with investments in a qualified default investment alternative must be permitted to direct their investments on a daily basis.

The Department received many comments requesting clarification on this requirement, most often concerning what the Department considers to be a financial penalty. Commenters asked whether investment-level fees and restrictions, as opposed to fees or other restrictions that are imposed by the plan or the plan sponsor, would be considered impermissible restrictions or ''financial penalties.'' Commenters explained that fees and limitations that are part of the investment product are beyond the control of the plan sponsor and should not be considered financial penalties for purposes of the final regulation. The comment letters provided many examples of investment-level fees or restrictions that commenters believed should not be considered punitive, including redemption fees, back-end sales loads, reinvestment timing restrictions, market value adjustments, equity ''wash'' restrictions, and surrender charges.

In response to these and other comments, the Department has modified and restructured paragraph (c)(5) of the final regulation to provide more clarity with respect to limitations that may or may not be imposed on participants and beneficiaries who are defaulted into a qualified default investment alternative. As modified and restructured, paragraph (c)(5) of the final regulation includes three conditions applicable to a defaulted participant's or beneficiary's ability to move assets out of a qualified default investment alternative.

The first condition, as in the proposal, is intended to ensure that defaulted participants and beneficiaries have the same rights as other participants and beneficiaries under the plan regarding the frequency with which they may direct an investment out of a qualified default investment alternative. In this regard, paragraph (c)(5)(i) provides that any participant or beneficiary on whose behalf assets are invested in a qualified default investment alternative must be able to transfer, in whole or in part, such assets to any other investment alternative available under the plan with a frequency consistent with that afforded participants and beneficiaries who elect to invest in the qualified default investment alternative, but not less frequently than once within any three month period. The Department received no substantive comments on this provision and it is being adopted unchanged from the proposal.

The second and third conditions, at paragraphs (c)(5)(ii) and (iii), relate to limitations (i.e., restrictions, fees, etc.) other than those relating to the frequency with which participants may direct their investment out of a qualified default investment alternative, which are addressed in paragraph (c)(5)(i). Unlike the proposal, which limited the imposition of financial penalties for the period of a defaulted participant's or beneficiary's investment, the regulation, as modified, precludes the imposition of any restrictions, fees or expenses (other than investment management and similar types of fees and expenses) during the first 90 days of a defaulted participant's or beneficiary's investment in the qualified default investment alternative. At the end of the 90-day period, defaulted participants and beneficiaries may be subject to the restrictions, fees or expenses that are otherwise applicable to participants and beneficiaries under the plan who elected to invest in that qualified default investment alternative. While the condition on restrictions, fees and expenses is limited to 90 days, the condition, as explained below, is broad in its application, thereby providing defaulted participants and beneficiaries an opportunity to redirect or withdraw their contributions. Also, the Department believes that restrictions or fees on qualified default investment alternatives are more likely to be waived if this period is shortened to 90 days. The 90-day period is defined by reference to the participant's first elective contribution as determined under section 414(w)(2)(B) of the Code, thereby enabling participants, if their plan permits, to make a permissible withdrawal without being subject to the 10 percent additional tax under section 72(t) of the Code.

Specifically, paragraph (c)(5)(ii) of the regulation provides that any transfer or permissible withdrawal described in paragraph (c)(5) resulting from a participant's or beneficiary's election to make such a transfer or withdrawal during the 90-day period beginning on the date of the participant's first elective contribution as determined under section 414(w)(2)(B) of the Code, or other first investment in a qualified default investment alternative on behalf of a participant or beneficiary described in paragraph (c)(2), shall not be subject to any restrictions, fees or expenses (except those fees and expenses that are charged on an ongoing basis for the investment itself, such as investment management and similar fees, and are not imposed, or do not vary, based on a participant's or beneficiary's decision to withdraw, sell or transfer assets out of the investment alternative). Accordingly, no restriction, fee, or expense may be imposed on any transfer or permissible withdrawal of assets, whether assessed by the plan, the plan sponsor, or as part of an underlying investment product or portfolio, and regardless of whether or not the restriction, fee, or expense is considered to be a ''penalty.'' This provision, therefore, would prevent the imposition of any surrender charge, liquidation or exchange fee, or redemption fee. It also would prohibit any market value adjustment or ''round-trip'' restriction on the ability of the participant or beneficiary to reinvest within a defined period of time. As long as the participant's or beneficiary's election is made within the applicable 90-day period, no such charges may be imposed even if, due to administrative or other delays, the actual transfer or withdrawal does not take place until after the 90-day period.

Paragraph (c)(5)(ii)(B) makes clear that the limitations of paragraph (c)(5)(ii)(A) do not apply to fees and expenses that are charged on an ongoing basis for the operation of the investment itself, such as investment management fees, distribution and/or service fees (''12b–1'' fees), and administrative-type fees (legal, accounting, transfer agent expenses, etc.), and are not imposed, or do not vary, based on a participant's or beneficiary's decision to withdraw, sell or transfer assets out of the investment alternative. In response to a request for a clarification, the Department further notes that to the extent that a participant or beneficiary loses the right to elect an annuity as a result of a transfer out of a qualified default investment alternative with an annuity feature, such loss would not constitute an impermissible restriction for purposes of paragraph (c)(5)(ii) inasmuch as the annuity feature is a component of the investment alternative itself.

Paragraph (c)(5)(iii) of the final regulation provides that, following the end of the 90-day period described in paragraph (c)(5)(ii)(A), any transfer or permissible withdrawal described in paragraph (c)(5) shall not be subject to any restrictions, fees or expenses not otherwise applicable to a participant or beneficiary who elected to invest in that qualified default investment alternative. This provision is intended to ensure that defaulted participants and beneficiaries are not subject to restrictions, fees or penalties that would serve to create a greater disincentive for defaulted participants and beneficiaries, than for other participants and

beneficiaries under the plan, to withdraw or transfer assets from a qualified default investment alternative.

The Department notes that the final rule does not otherwise address or provide relief with respect to the direction of investments out of a qualified default investment alternative into another investment alternative available under the plan. See generally section 404(c)(1) of ERISA and 29 CFR 2550.404c–1.

The last condition of paragraph (c) of the regulation adopts, without modification from the proposal, the requirement that plans offer participants and beneficiaries the opportunity to invest in a ''broad range of investment alternatives'' within the meaning of 29 CFR 2550.404c–1(b)(3).[1] See § 2550.404c–5(c)(6). The Department believes that participants and beneficiaries should be afforded a sufficient range of investment alternatives to achieve a diversified portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the pension plan participant or beneficiary. The Department believes that the application of the ''broad range of investment alternatives'' standard of the section 404(c) regulation accomplishes this objective. The Department received no substantive objections to this provision and, as indicated, is adopting the provision without change.

Notices

As discussed above, relief under the final regulation is conditioned on furnishing participants and beneficiaries advance notification concerning the default investment provisions of their plan. See § 2550.404c–5(c)(3). The specific information required to be contained in the notice is set forth in paragraph (d) of the regulation.

As proposed, paragraph (d) of § 2550.404c–5 required that the notice to participants and beneficiaries be written in a manner calculated to be understood by the average plan participant and contain the following information: (1) A description of the circumstances under which assets in the individual account of a participant or beneficiary may be invested on behalf of the participant and beneficiary in a qualified default investment alternative; (2) a description of the qualified default investment alternative, including a description of the investment objectives, risk and return characteristics (if applicable), and fees and expenses attendant to the investment alternative; (3) a description of the right of the participants and beneficiaries on whose behalf assets are invested in a qualified default investment alternative to direct the investment of those assets to any other investment alternative under the plan, including a description of any applicable restrictions, fees, or expenses in connection with such transfer; and (4) an explanation of where the participants and beneficiaries can obtain investment information concerning the other investment alternatives available under the plan.

A few commenters suggested expanding the content of the notice to include procedures for electing other investment options, a description of the right to request additional information, a description of any right to obtain investment advice (if available), a description of fees associated with the qualified default investment alternatives, information about other investment options under the plan, etc. While the Department did not adopt all of the changes suggested by the commenters, the Department has modified the notice content requirements to broaden the required disclosures. As modified, the Department intends that the furnishing of a notice in accordance with the timing and content requirements of this regulation will not only satisfy the notice requirements of section 404(c)(5)(B) of ERISA but also the notice requirements under the preemption provisions of ERISA section 514 applicable to an ''automatic contribution arrangement,'' within the meaning of ERISA section 514(e)(2).

ERISA section 404(c)(5)(B)(i)(I) provides for the furnishing of a notice explaining ''the employee's right under the plan to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant, such contributions and earnings will be invested.'' ERISA section 514(e)(1) provides for the preemption of State laws that would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. Section 514(e)(3) provides that a plan administrator of an automatic contribution arrangement shall provide a notice describing the rights and obligations of participants under the arrangement and such notice shall include ''an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage)'' and an explanation of ''how contributions made under the arrangement will be invested in the absence of any investment election by the participant.''

In addition to broadening the required disclosures, the Department revised the disclosures relating to restrictions, fees and expenses to conform the notice requirements to the changes in paragraph (c)(5) relating to restrictions, fees or expenses. As modified, paragraph (d) of the final regulation provides that the notices required by paragraph (c)(3) shall include: (1) A description of the circumstances under which assets in the individual account of a participant or beneficiary may be invested on behalf of the participant or beneficiary in a qualified default investment alternative; and, if applicable, an explanation of the circumstances under which elective contributions will be made on behalf of a participant, the percentage of such contribution, and the right of the participant to elect not to have such contributions made on his or her behalf (or to elect to have such contributions made at a different percentage); (2) an explanation of the right of participants and beneficiaries to direct the investment of assets in their individual accounts; (3) a description of the qualified default investment alternative, including a description of the investment objectives, risk and return characteristics (if applicable), and fees and expenses attendant to the investment alternative; (4) a description of the right of the participants and beneficiaries on whose behalf assets are invested in a qualified default investment alternative to direct the investment of those assets to any other investment alternative under the plan, including a description of any applicable restrictions, fees or expenses in connection with such transfer; and (5) an explanation of where the participants and beneficiaries can obtain investment information concerning the other investment alternatives available under the plan.

Other commenters suggested that the Department provide a model notice.

[1] 29 CFR 2550.404c–1(b)(3) provides that ''[a] plan offers a broad range of investment alternatives only if the available investment alternatives are sufficient to provide the participant or beneficiary with a reasonable opportunity to: (A) Materially affect the potential return on amounts in his individual account with respect to which he is permitted to exercise control and the degree of risk to which such amounts are subject; (B) Choose from at least three investment alternatives: (1) each of which is diversified; (2) each of which has materially different risk and return characteristics; (3) which in the aggregate enable the participant or beneficiary by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary; and (4) each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio; * * *''

Because applicable plan provisions and qualified default investment alternatives may vary considerably from plan to plan, the Department believes it would be difficult to provide model language that is general enough to accommodate different plans and different investment products and portfolios and that would allow sufficient flexibility to plan sponsors. Accordingly, the final regulation does not include model language for plan sponsors. However, the Department will explore this concept in the future in coordination with the Department of Treasury concerning the similar notice requirements contained in sections 401(k)(13)(E) and 414(w) of the Code.

Commenters also requested guidance concerning the extent to which the final regulation's notice requirements could be satisfied by electronic distribution. The Department currently is reviewing its rules relating to the use of electronic media for disclosures under title I of ERISA. In the absence of guidance to the contrary, it is the view of the Department that plans that wish to use electronic means by which to satisfy their notice requirements may rely on either guidance issued by the Department of Labor at 29 CFR 2520.104b–1(c) or the guidance issued by the Department of the Treasury and Internal Revenue Service at 26 CFR 1.401(a)–21 relating to the use of electronic media.

Qualified Default Investment Alternatives

Under the final regulation, as in the proposal, relief from fiduciary liability is provided with respect to only those assets invested on behalf of a participant or beneficiary in a ''qualified default investment alternative.'' See § 2550.404c–5(c)(1). Paragraph (e) of § 2550.404c–5 sets forth four requirements for a ''qualified default investment alternative.''

The first requirement, at paragraph (e)(1), addresses investments in employer securities. As indicated in the preamble to the proposal, while the Department does not believe it is appropriate for a qualified default investment alternative to encourage investments in employer securities, the Department also recognizes that an absolute prohibition against holding or investing in employer securities may be unnecessarily limiting and complicated. Accordingly, the proposal, in addition to establishing a general prohibition against qualified default investment alternatives holding or permitting acquisition of employer securities, provided two exceptions to the rule. While, as discussed below, the Department did receive comments generally requesting different or expanded exceptions to the general prohibition, the Department has determined it appropriate to adopt paragraph (e)(1) without modification from the proposal.

The two exceptions to the general prohibition are set forth in paragraph (e)(1)(ii). The first exception applies to employer securities held or acquired by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, or a similar pooled investment vehicle (e.g., a common or collective trust fund or pooled investment fund) regulated and subject to periodic examination by a State or Federal agency and with respect to which investment in such securities is made in accordance with the stated investment objectives of the investment vehicle and independent of the plan sponsor or an affiliate thereof.

Several commenters suggested that the exception to investments in employer securities should extend to circumstances when the plan sponsor delegates investment responsibilities to an ERISA section 3(38) investment manager and with respect to which the plan sponsor has no discretion regarding the acquisition or holding of employer securities. The Department did not adopt this suggestion because in such instances the investment manager may be following the investment policies established by the plan sponsor, and, while the plan sponsor may not be directly exercising discretion with respect to the acquisition or holding of employer securities, the plan sponsor might indirectly be influencing such decision through an investment policy that requires the investment manager to acquire or hold various amounts of employer securities. In the Department's view, limiting the exception to regulated financial institutions avoids this type of problem.

Another commenter suggested that the Department limit qualified default investment alternatives to a 10% investment in employer securities. The Department did not adopt this suggestion because it believes that a percentage limit test would effectively require that a plan sponsor or other fiduciary monitor on a daily, if not more frequent, basis the specific holdings of the qualified default investment alternative and fluctuations in the value of the assets in the qualified default investment alternative to determine compliance with a percentage limit. Such a test would, in the Department's view, result in considerable uncertainty as to whether at any given time the intended designated qualified default investment alternative actually met the requirements of the regulation. The Department believes that the approach it has taken to limiting employer securities provides both flexibility and certainty.

The second exception is for employer securities acquired as a matching contribution from the employer/plan sponsor or at the direction of the participant or beneficiary. This exception is intended to make clear that an investment management service will not be precluded from serving as a qualified default investment alternative under § 2550.404c–5(e)(4)(iii) merely because the account of a participant or beneficiary holds employer securities acquired as matching contributions from the employer/plan sponsor, or acquired as a result of prior direction by the participant or beneficiary; however, an investment management service will be considered to be serving as a qualified default investment alternative only with respect to assets of a participant's or beneficiary's account over which the investment management service has authority to exercise discretion.

In the case of employer securities acquired as matching contributions that are subject to a restriction on transferability, relief would not be available with respect to such securities until the investment management service has an unrestricted right to transfer the securities. Although an investment management service would be responsible for determining whether and to what extent the account should continue to hold investments in employer securities, the investment management service could not, except as part of an investment company or similar pooled investment vehicle, exercise its discretion to acquire additional employer securities on behalf of an individual account without violating § 2550.404c–5(e)(1).

In the case of prior direction by a participant or beneficiary, if the participant or beneficiary provided investment direction with respect to employer securities, but failed to provide investment direction following an event, such as a change in investment alternatives, and the terms of the plan provide that in such circumstances the account's assets are invested in a qualified default investment alternative, the final regulation continues to permit an investment management service to hold and manage those employer securities in the absence of participant or beneficiary direction. Although the investment management service may not acquire additional employer securities using participant

contributions, the investment management service may reduce the amount of employer securities held by the account of the participant or beneficiary.

One commenter suggested that the exception be extended to qualified default investment alternatives other than the investment management service described in paragraph (e)(4)(iii). An employer securities match can only constitute part of a qualified default investment alternative if the fiduciary selects an investment management service as the qualified default investment alternative, because only in the investment management service context is the responsible fiduciary undertaking the duty to evaluate the appropriate exposure to employer securities for a particular participant or beneficiary and undertaking the obligation to sell employer securities until the participant's or beneficiary's account reflects that appropriate exposure. Accordingly, the Department declines to adopt the commenter's suggestion to expand the second employer securities exception to other qualified default investment alternatives. The Department further notes that this regulation does not provide relief for the acquisition of employer securities by an investment service.

The second requirement, at paragraph (e)(2), is intended to ensure that the qualified default investment alternative itself does not impose any restrictions, fees or expenses inconsistent with the requirements of paragraph (c)(5) of § 2550.404c–5. While the provision has been redrafted for clarity, it is substantively the same as in the proposal and, therefore, is being adopted without substantive change.

The third requirement, at paragraph (e)(3), addresses the management of a qualified default investment option. As proposed, the regulation required that a qualified default investment alternative be either managed by an investment manager, as defined in section 3(38) of the Act, or an investment company registered under the Investment Company Act of 1940. Several commenters suggested that requiring a qualified default investment alternative to be managed by an investment manager, or to be an investment company, is too restrictive.

A number of commenters noted that section 3(38) of ERISA excludes from the definition of the term ''investment manager'' named fiduciaries, as defined in section 402(a)(2) of ERISA [2] and trustees.[3] With regard to named fiduciaries, commenters pointed out that a number of employers serve as named fiduciaries and manage their plan investments in-house, resulting in reduced administrative and investment management costs. Commenters also noted that implementation of the requirement as proposed would eliminate the ability of plan sponsors who are named fiduciaries to directly manage a qualified default investment alternative, use asset allocation models, develop asset allocations themselves, or engage investment consultants (who may or may not be fiduciaries) to assist in the development of asset allocations. Other commenters, however, suggested that the final regulation retain the requirement that only investment managers within the meaning of section 3(38) of ERISA or registered investment companies be permitted to manage qualified default investment alternatives. Commenters suggested that investment management decisions should be made by investment professionals who are investment managers within the meaning of section 3(38) of ERISA; they asserted that requiring a 3(38) manager is safer and more prudent than other alternatives, and such requirement is administratively feasible.

With regard to permitting plan sponsors to manage a qualified default investment alternative, the Department is persuaded that a plan sponsor's willingness to serve as a named fiduciary responsible for the management of the plan's investment options in conjunction with the potential cost savings to plan participants that can result from such management, is a sufficient basis to expand the regulation to permit plan sponsors that are named fiduciaries to manage a qualified default investment alternative. This modification is reflected in paragraph (e)(3)(i)(C).

A number of commenters also indicated that, under the proposal, investment consultants engaged by plan sponsors would have to assume fiduciary responsibility for asset allocations in order to obtain relief under the proposal. These commenters suggested that requiring an investment consultant to assume fiduciary responsibility for asset allocation would increase costs for the provision of such consulting services, and that these costs inevitably would be passed along to participants. Commenters also asserted that the use of asset allocation models is well-established and is often an effective way to lower costs and to provide a clean structure and process for the formation, selection and monitoring of all elements of a prudent default investment alternative. The commenters also noted that many plan sponsors develop generic asset allocations and select particular funds, tailored to a particular plan, with the input of an investment consultant who may be an investment adviser under the Investment Advisers Act of 1940. With regard to these comments, the Department continues to believe that when plan fiduciaries are relieved of liability for underlying investment management/asset allocation decisions, those responsible for the investment management/asset allocation decisions must be fiduciaries and those fiduciaries must acknowledge their fiduciary responsibility and liability under the ERISA. The Department notes, however, that plan sponsors who serve as named fiduciaries of a qualified default investment alternative may, to the extent they consider it prudent, engage investment consultants, utilize asset allocation models (computer-based or otherwise), etc. to carry out their investment management/asset allocation responsibilities. Accordingly, the Department does not believe the regulation in this regard should to any significant degree alter the availability or cost of such services.

With regard to the exclusion of trustees from the ''investment manager'' definition, commenters suggested that the final regulation make clear that bank trustees of collective investment funds are permitted to manage a qualified default investment alternative. In this regard, commenters noted that the definition of ''investment managers'' recognizes that banks and other

[2] Section 402(a)(2) of ERISA provides that the term ''named fiduciary'' means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary by a person who is an employer or employee organization with respect to the plan, or by such an employer and such an employee organization acting jointly.

[3] Section 3(38) defines the term ''investment manager'' to mean any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2))—(A) who has the power to manage, acquire, or dispose of any asset of a plan; (B) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*]; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a(a)], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary; (iii) is a bank, as defined in that Act; or (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to the plan.

institutions can be investment managers, citing ERISA section 3(38)(B)(ii) and (iii), and should not be foreclosed from managing a qualified default investment alternative solely on the basis that the institution might otherwise serve as a trustee. These commenters noted that, similar to investment managers, banks as trustees of collective funds have fiduciary responsibility and liability under ERISA with respect to the funds they maintain. The Department is persuaded that an entity that meets the requirements of section 3(38)(A), (B) and (C) should not be precluded from assuming fiduciary responsibility and liability for the underlying investment management/asset allocation decisions of a qualified default investment alternative solely because that entity serves in a trustee capacity for the plan.[4] The Department has modified the final regulation accordingly. This modification is reflected in paragraph (e)(3)(i)(B).

In response to a request from one commenter, the Department confirms that the provisions of the regulation do not preclude a qualified default investment alternative from having more than one fiduciary (e.g., investment manager) responsible for the investment management/asset allocation decisions of the investment alternative, as would be the case in an arrangement utilizing a ''fund of funds'' approach to designing a qualified default investment alternative.

As with the proposal, the regulation permits a qualified default investment alternative to be an investment company registered under the Investment Company Act of 1940. See paragraph (e)(3)(ii) of § 2550.404c–5.

In addition to the foregoing, paragraph (e)(3) has been expanded to include certain capital preservation products and funds described in paragraph (e)(4)(iv) and (v) of § 2550.404c–5. These products and funds are discussed below.

The last requirement for a qualified default investment alternative conditions relief on the use of specified types of investment fund products, model portfolios or services. See § 2550.404c–5(e)(4). In the proposal, the Department identified three categories of investment alternatives that it determined appropriate for achieving meaningful retirement savings over the long-term for those participants and beneficiaries who, for one reason or another, do not elect to direct the investment of their pension plan assets. After careful consideration of all the comments concerning the nature and type of the investment alternatives that should be included as qualified default investment alternatives under the regulation, the Department, as discussed below, has decided to retain the three proposed categories of investment alternatives, essentially unchanged from the proposal, as the type of alternatives appropriate for default investments under the regulation. However, in recognition of the fact that some plan sponsors may find it desirable to reduce investment risks for all or part of their workforce following employees' initial enrollment in the plan, the Department has added a limited capital preservation option that would constitute a qualified default investment alternative under the regulation for purposes of contributions made on behalf of a participant for a 120-day period following the date of the participant's first elective contribution. See paragraph (e)(4)(iv). In addition, the Department has modified the regulation to include a ''grandfather''-like provision pursuant to which stable value products and funds will constitute a qualified default investment alternative under the regulation for purposes of investments made prior to the effective date of the regulation. See paragraph (e)(4)(v).

As noted above, the three categories of investment alternatives set forth in the proposal are being adopted essentially unchanged from the proposal. One organizational change appearing in the final regulation involves the inclusion of diversification language in each of three categories, rather than as a separate requirement of general applicability as in the proposal (see paragraph (e)(4) of proposed regulation § 2550.404c–5). This change accommodates the addition of the capital preservation investment alternatives mentioned above that may not, given the nature of the investment, satisfy a diversification standard.

Some commenters expressed concern that the Department's approach to defining qualified default investment alternatives takes into account only products currently available in the marketplace and that the defining of qualified default investment alternatives should be based on more general criteria. These commenters emphasized that the regulation should not stifle creativity in the development of the next generation of retirement products. While the Department does provide examples of products, portfolios and services that would fall within the framework of the various definitions of products, portfolios and services set forth in the regulation, these examples are provided solely for the purpose of providing the benefits community with guidance as to what might be included within the defined categories and are not intended in any way to limit the application of the definitions to such vehicles. The Department believes that, on the basis of the information it has at this time and the comments on the proposal generally, the approach it is taking to defining qualified default investment alternatives for purposes of the regulation is sufficiently flexible to accommodate future innovations and developments in retirement products.

A number of commenters requested clarification concerning application of the regulation to possible qualified default investment alternatives that are offered through variable annuity contracts. Commenters explained that variable annuity contracts typically permit participants to invest in a variety of investments through one or more separate accounts (or sub-accounts within the separate account) that would qualify as qualified default investment alternatives under the regulation. Commenters also requested confirmation that the availability of annuity purchase rights, death benefit guarantees, investment guarantees or other features common to variable annuity contracts would not themselves affect the status of a variable annuity contract that otherwise met the requirements for a qualified default investment alternative. Consistent with providing flexibility and encouraging innovation in the development and offering of retirement products, model portfolios or services, the Department intends that the definition of ''qualified default investment alternative'' be construed to include products and portfolios offered through variable annuity and similar contracts, as well as through common and collective trust funds or other pooled investment funds, where the qualified default investment alternative satisfies all of the conditions of the regulation. For purposes of identifying the entity responsible for the management of the qualified default investment alternative in such arrangements pursuant to paragraph (e)(3) of § 2550.404c–5, it is the view of the Department that such a determination is made by reference to the entity (e.g., separate account, sub-account, or similar entity) that is responsible for carrying out the day-to-day investment management/asset allocation responsibilities. Finally, with regard to such products and portfolios,

[4] This position is consistent with the Department's long-held view that the parenthetical language of section 3(38) was merely intended to indicate that in order for a person to be an investment manager for a plan, that person must be more than a mere trustee or named fiduciary. See Advisory Opinion No. 77–69/70A

it is the view of the Department that the availability of annuity purchase rights, death benefit guarantees, investment guarantees or other features common to variable annuity contracts will not themselves affect the status of a fund, product or portfolio as a qualified default investment alternative when the conditions of the regulation are satisfied. A new paragraph (e)(4)(vi) was added to the regulation to clarify these principles.

A number of commenters submitted questions or comments concerning the specific investment alternatives described in the regulation.

The first investment alternative set forth in the regulation, at paragraph (e)(4)(i), is an investment fund, product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses, and is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Consistent with the proposal, the description provides that such products and portfolios change their asset allocation and associated risk levels over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. Also like the proposal, the description makes clear that asset allocation decisions for eligible products and portfolios are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a fund or portfolio may be a ''life-cycle'' or ''targeted-retirement-date'' fund or account.

The reference to ''an investment fund product or model portfolio'' is intended to make clear that this alternative might be a ''stand alone'' product or a ''fund of funds'' comprised of various investment options otherwise available under the plan for participant investments. As noted in the proposal, the Department believes that, in the context of a fund of funds portfolio, it is likely that money market, stable value and similarly performing capital preservation vehicles will play a role in comprising the mix of equity and fixed-income exposures.

Several commenters asked the Department to clarify whether a plan fiduciary must, or may, consider demographic or other factors in addition to a participant's age or target retirement date when selecting an investment product intended to satisfy the first category of qualified default investment alternatives. For example, commenters suggested that a plan fiduciary may wish to take into account an employer-provided defined benefit plan or an employer stock contribution when selecting the plan's default investment product. Although the final regulation does not preclude consideration of factors other than a participant's age or target retirement date in these circumstances, the regulation is clear that such considerations are neither required nor necessary as a condition to a fiduciary obtaining relief under the regulation. The Department intended to provide plan fiduciaries with certainty that they have complied with the requirements of the regulation; accordingly, as long as a plan fiduciary satisfies its general obligations under ERISA when selecting any qualified default investment alternative, the fiduciary will not lose the relief provided by the regulation if he or she selects a product, portfolio or service described in the regulation.

One commenter requested clarification concerning the status of ''lifestyle'' funds. ''Lifestyle'' funds were defined as being similar to ''lifecycle'' funds, except that the allocation in a given lifestyle fund does not change over time to become more conservative. That is, the investment manager of a lifestyle fund invests the fund's assets to achieve a predetermined level of risk, such as ''conservative,'' ''moderate,'' or ''aggressive.'' While it does not appear that a lifestyle fund, as defined by the commenter, would by itself satisfy the requirements for a product or portfolio within the meaning of paragraph (e)(4)(i), such a fund could, in the Department's view, constitute part of a qualified default investment alternative within the meaning of paragraph (e)(4)(i). Similarly, nothing in the final regulation precludes an investment manager from allocating a portion of a participant's assets to such a fund as part of a qualified default investment alternative within the meaning of paragraph (e)(4)(iii). It is also possible that a lifestyle fund, as defined by the commenter, might be able to constitute an investment within the meaning of paragraph (e)(4)(ii), an example of which is a ''balanced'' fund.

With respect to the language requiring that the investment fund, product or model portfolio provide varying degrees of long-term appreciation and capital preservation through ''a mix of equity and fixed income exposures,'' one commenter inquired whether the Department intended to exclude funds that had no fixed income exposure, which, according to the commenter, might be appropriate for young individuals many years away from retirement. While the Department believes that such an investment option may be appropriate for individuals actively electing to direct their own investments, the Department believes that when an investment is a default investment, the investment should provide for some level of capital preservation through fixed income investments. Accordingly, the final regulation, like the proposal, continues to require that the qualified default investment alternatives, defined in paragraph (e)(4)(i), (ii) and (iii), be designed to provide degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures.

The second investment alternative set forth in the regulation, at paragraph (e)(4)(ii), is an investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses, and is designed to provide long-term appreciation and capital preservation through a mix of equity and fixed income exposures consistent with a target level of risk appropriate for participants of the plan as a whole. For purposes of this alternative, asset allocation decisions for such products and portfolios are not required to take into account the age of an individual participant, but rather focus on the participant population as a whole. An example of such a fund or portfolio may be a ''balanced'' fund. As with the preceding alternative, the reference to ''an investment fund product or model portfolio'' is intended to make clear that this alternative might be a ''stand alone'' product or a ''fund of funds'' comprised of various investment options otherwise available under the plan for participant investments. In the context of a fund of funds portfolio, it is likely that money market, stable value and similarly performing capital preservation vehicles will play a role in comprising the mix of equity and fixed-income exposures for this alternative.

Although commenters generally supported inclusion of a balanced investment option as a qualified default investment alternative, a number of commenters had questions or expressed concern regarding the requirement that the investment alternative define its investment objectives by reference to ''a target level of risk appropriate for participants of the plan as a whole.'' Commenters indicated that having to take into account the ''participants of the plan as a whole'' would result in uncertainty as to whether the plan sponsor properly matched the chosen fund to its participant population. In

addition, commenters asserted that the on-going monitoring necessary for the plan fiduciary to ensure the continued appropriateness of the match would likely result in unnecessary burdens and costs. One commenter explained that balanced funds as a group hold approximately 60–65% percent of their portfolios in equity investments,[5] and that the typical balanced fund would be somewhat more conservatively invested than most targeted-retirement-date funds; hence, the commenter argued that balanced funds are an appropriate default for all workers. The commenter further noted that periodic monitoring, while adding unnecessary costs, will likely never produce an impetus for changing to a different balanced fund option. After careful consideration of the comments, the Department has decided to retain the requirement that, for purposes of paragraph (e)(4)(ii), the selected qualified default investment alternative reflect ''a target level of risk appropriate for participants of the plan as a whole.'' The Department recognizes that, to the extent that a particular investment fund product or model portfolio does not itself consider or adjust its balance of fixed income and equity exposures to take into account a target level of risk appropriate for the participants of the plan as a whole, plan fiduciaries will retain that responsibility. The Department believes that, as a practical matter, this responsibility would be discharged by the fiduciary in connection with the prudent selection and monitoring of the investment fund product.[6] Specifically, fiduciaries would take into account the diversification of the portfolio, the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan, the projected return of the portfolio relative to funding objectives of the plan, and the fees and expenses attendant to the investment.[7]

Unlike the first alternative, which focuses on the age, target retirement date (such as normal retirement age under the plan) or life expectancy of an individual participant, the second alternative requires a fiduciary to take into account the demographics of the plan's participants, and would be similar to the considerations a fiduciary would take into account in managing an individual account plan that does not provide for participant direction. A number of commenters asked the Department to clarify the demographic factors that should be considered by the fiduciary. The Department understands that the only information a plan fiduciary may know about its participant population is age. Thus, when determining a target level of risk appropriate for participants of a plan as a whole, a plan fiduciary is required to consider the age of the participant population. However, a plan fiduciary is not foreclosed from considering other factors relevant to the participant population, if the fiduciary so chooses.

The third alternative set forth in the regulation, at paragraph (e)(4)(iii), is an investment management service with respect to which an investment manager allocates the assets of a participant's individual account to achieve varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures, offered through investment alternatives available under the plan, based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy.[8] Such portfolios change their asset allocation and associated risk levels over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. Similar to the first two alternatives, these portfolios must be structured in accordance with generally accepted investment theories and diversified so as to minimize the risk of large losses. The final regulation also clarifies that, as with the other alternatives described in the regulation, asset allocation decisions are not required to take into account risk tolerances, other investments or other preferences of an individual participant. An example of such a service may be a ''managed account.''

One commenter requested clarification that, with regard to a participant's account holding employer securities with restrictions on transferability, the investment management service could serve as qualified default investment alternative for purposes of all other assets in the participant's account with respect to which the managed account has investment discretion. As discussed earlier, the mere fact that the account of a participant or beneficiary holds employer securities acquired as matching contributions from the employer/plan sponsor, or acquired as a result of prior direction by the participant or beneficiary, will not preclude an investment management service from serving as a qualified default investment alternative. However, an investment management service will be considered to be serving as a qualified default investment alternative only with respect to the assets of a participant's or beneficiary's account over which the investment management service has authority to exercise discretion. If the investment management service does not have the authority to exercise discretion over investments in employer securities, the investment management service will not be a qualified default investment alternative with respect to those securities. See discussion of paragraph (e)(1)(ii) of § 2550.404c–5, above.

Another commenter expressed concern that requiring the manager of a managed account qualified default investment alternative to be an investment manager may prevent plan sponsors from using existing managed account programs, such as that addressed in Advisory Opinion 2001–09A (the ''SunAmerica Opinion''). The Department believes these concerns are addressed by the modifications to paragraph (e)(3)(i)(C), pursuant to which plan sponsors who are named fiduciaries may manage qualified default investment alternatives.

Many commenters expressed concern that the Department did not include capital preservation, in particular stable value, products as qualified default investment alternatives on a stand alone basis. These commenters pointed out that stable value funds are utilized by a large number of plans as default investment funds. These funds are often chosen by plan sponsors because they provide: Safety of principal; bond-like returns without the volatility associated with bonds; stability and steady growth of principal and earned income; and benefit-responsive liquidity, so that plan participants may transact at ''book value.'' Commenters supporting stable value funds argued that stable value funds are superior to money market

[5] Investment Company Institute, Quarterly Supplementary Data for Quarter Ending June 30, 2006.

[6] See paragraph (b)(2) of 29 CFR 2550.404c–5.

[7] See 29 CFR 2550.404a–(b).

[8] Although investment management services are included within the scope of relief, the Department notes that relief similar to that provided by this regulation is available to plan fiduciaries under the statute. Specifically, section 402(c)(3) of ERISA provides that ''a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.'' Section 405(d)(1) of ERISA provides that ''[i]f an investment manager or managers have been appointed under section 402(c)(3), then * * * no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.'' The Department included investment management services within the scope of fiduciary relief in order to avoid any ambiguity concerning the scope of relief available to plan fiduciaries in the context of participant directed individual account plans.

funds and other cash-equivalent products because stable value investments earn higher rates of return than money market funds and other cash-equivalent products. A number of these commenters also suggested that stable value funds are appropriate for plans with different demographics, including, for example, plans that cover younger, higher turnover employees who are likely to elect lump sum payments, or plans that cover older, near-retirement employees.

Commenters in support of the inclusion of stable value products also indicated that stable value funds have relatively low costs compared to life-cycle, targeted-retirement-date and balanced funds, particularly those that use a ''fund of funds'' structure. These commenters expressed the view that, because stable value returns are comparable to intermediate corporate bond returns, the premium, if any, of equity investments over stable value investments has been overstated. Many of the commenters argued that the exclusion of stable value funds would unduly discourage plan sponsors from using stable value funds as a default option, to the detriment of plan participants. These commenters argued that limiting default investment alternative choices discourages plans from implementing automatic enrollment. In addition, some commenters suggest that if participants whose account balances are invested in qualified default investment alternatives react negatively to volatile equity performance by opting out of plan participation when losses occur, the regulation may ultimately decrease retirement savings, and the potential gains expected from funds with higher historical long-term performance records will not materialize. Some of the comments supporting the inclusion of capital preservation products also argued that the Congress, in referencing ''a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both'' in section 624 of the Pension Protection Act, intended the Department to include capital preservation products as a separate stand alone qualified default investment alternative.

The Department also received comments in support of its determination that capital preservation products, such as money market funds, stable value funds and similarly performing investment vehicles, should not themselves constitute qualified default investment alternatives under the regulation.

After careful consideration of the comments addressing this issue and assessment of related economic impacts, the Department has determined, except as otherwise discussed below, not to include capital preservation products, such as money market or stable value funds, as a separate long-term investment option under the regulation. As a short-term investment, money market or stable value funds may not, in the Department's view, significantly affect retirement savings. The Department recognizes, however, that such investments can, and in many instances will, play an important role as a component of a diversified portfolio that constitutes a qualified default investment alternative. It is the view of the Department that investments made on behalf of defaulted participants ought to and often will be long-term investments and that investment of defaulted participants' contributions and earnings in money market and stable value funds will not over the long-term produce rates of return as favorable as those generated by products, portfolios and services included as qualified default investment alternatives, thereby decreasing the likelihood that participants invested in capital preservation products will have adequate retirement savings.

The Department also is concerned that including capital preservation and stable value products as a qualified default investment alternative for future contributions on behalf of defaulted participants may impede, or even reverse, the current trend away from the use of such products as default investments. The Department understands that, because account balances invested in capital preservation products are unlikely to show a nominal loss, a number of employers, if given a choice between capital preservation products and more diversified investment options, may be more likely to opt for capital preservation products because they are perceived as presenting less litigation risk for employers. If so, inclusion of a capital preservation option without limitation may increase utilization of capital preservation products as default investments and, thereby, increase the number of participants likely to have inadequate retirement savings, as compared with savings that would be generated through investments in the established qualified default investment alternatives.

Lastly, the Department is concerned that inclusion of a capital preservation product as a qualified default investment alternative, without limitation, may be perceived by participants and beneficiaries as an endorsement by the government, by virtue of its inclusion in the regulation, or as an endorsement by the employer, by virtue of its selection as the qualified default investment alternative, as an appropriate investment for long-term retirement savings. Although the Department recognizes that such perceptions on the part of some participants and beneficiaries might be addressed with investment education and investment advice, the Department nonetheless is concerned that, overall, the potentially adverse effect on long-term retirement savings may be significant.

In light of these concerns, the Department, as indicated above, has not included a capital preservation investment alternative as a long-term stand alone investment option for future contributions under the final regulation. The Department, however, has added two exceptions to the regulation that accommodate limited investments in capital preservation products as qualified default investment alternatives. The first exception is at paragraph (e)(4)(iv). In general, this exception treats investments in capital preservation products or funds as an investment in a qualified default investment alternative for a 120-day period following a participant's first elective contribution (as determined under section 414(w)(2)(B) of the Code).

Specifically, paragraph (e)(4)(iv)(A) recognizes, subject to the limitations of paragraph (e)(4)(iv)(B), as a qualified default investment alternative an investment product that is designed to preserve principal and provide a reasonable rate of return, whether or not guaranteed, consistent with liquidity. The product description and applicable standards are similar to the standards adopted for purposes of automatic rollovers of mandatory distributions at 29 CFR 2550.404a–2. The Department believes it is appropriate to include capital preservation products as a limited-duration qualified default investment alternative to afford plan sponsors the flexibility of utilizing a near risk-free investment alternative for the investment of contributions during the period of time when employees are most likely to opt out of plan participation. The use of capital preservation products in these circumstances will enable plan sponsors to return contributed amounts to participants who opt out without concern about loss of principal. In this regard, the limitation set forth in paragraph (e)(4)(iv)(B) provides that capital preservation products described in paragraph (e)(4)(iv)(A) shall, with respect to any given participant, be treated as a qualified default investment

alternative for a 120-day period following the participant's first elective contribution (as determined under section 414(w)(2)(B) of the Code). At the end of the 120-day period, capital preservation products would cease to be a qualified default investment alternative with respect to any assets of the participant that continue to be invested in such products. In order to avail itself of the relief afforded by the regulation, the plan fiduciary must redirect the participant's investment in the capital preservation product to another qualified default investment alternative prior to the end of the 120-day period. As previously stated, such alternative may include an appropriate capital preservation component in the context of a diversified portfolio.

The 120-day time frame is intended to provide plans that allow an employee to elect to make a permissible withdrawal, consistent with section 414(w) of the Code, a reasonable amount of time following the end of the 90-day period provided in section 414(w)(2)(B) (i.e., the period during which employees may elect to make a permissible withdrawal) to effectuate a transfer of a participant's assets to another qualified default investment alternative.

The second exception relating to capital preservation products and funds is at paragraph (e)(4)(v). This exception, unlike the first, is intended to be limited to stable value products and funds with respect to which plan sponsors are typically limited by the terms of the investment contracts from unilaterally reinvesting assets on behalf of participants who fail to give investment direction without triggering a surrender charge or other fees that could directly and adversely affect participant account balances. Under the exception, stable value products and funds will be treated as a qualified default investment alternative solely for purposes of investments in such products or funds made prior to the effective date of this regulation. The Department believes that this ''grandfather''-type provision accommodates the concerns of commenters regarding the utilization of stable value products and funds by plan sponsors as their default investment option in the absence of guidance concerning fiduciary responsibilities attendant to default investments generally, guidance like that provided by this regulation. At the same time, by limiting the exception to pre-effective date contributions, plan sponsors are encouraged to assess whether and under what circumstances they wish to avail themselves of the relief provided under the regulation by utilizing a qualified default investment alternative that extends to participant contributions made after the effective date of this regulation. It is important to note, however, that, as indicated in the regulation itself, the standards applicable to qualified default investment alternatives set forth in the regulation are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to the investment of assets in the individual account of a participant or beneficiary. Accordingly, fiduciaries may, without regard to this regulation, conclude that a stable value product or fund is an appropriate default investment for their employees and use such product or fund for contributions on behalf of defaulted employees after the effective date of this regulation.

It also is important to note with regard to both of the exceptions discussed above that the relief afforded by the regulation for investments in the covered products or funds on behalf of defaulted participants is contingent on compliance with all the requirements of the regulation.

Finally, the Department disagrees with commenters' assertion that the Department's decision not to include capital preservation products as a qualified default investment alternative is inconsistent with Congressional intent. The Department believes that Congress, in enacting section 624 of the Pension Protection Act, provided the Department broad discretion in framing a regulation that would permit the Department to include or exclude capital preservation products as a separate qualified default investment alternative. The Department also notes that, pursuant to section 505 of ERISA, the Secretary may prescribe such regulations as are necessary or appropriate to carry out the provisions title I of ERISA.

C. Miscellaneous Issues

Transition Issues

A number of commenters raised issues concerning the status of existing default investments and transfers to default investments that would meet the requirements of the regulation. Specifically, commenters requested guidance on what steps should be taken to ensure that a plan's current default investments, which also meet the requirements of the regulation, will be treated as qualified default investment alternatives after the effective date of the regulation. Other commenters requested guidance on what steps should be taken when a plan is moving from default investments that do not meet the requirements of the regulation to qualified default investment alternatives. In both scenarios, commenters noted that plans often will not have the records necessary to distinguish participants who were defaulted into a default investment from those who affirmatively elected to invest in that investment. Some commenters requested retroactive relief for investments that would not otherwise constitute qualified default investment alternatives because a plan's determination to transfer assets out of such investments could trigger a market value adjustment or similar withdrawal penalty.

To ensure that an existing or a new default investment constitutes a qualified default investment alternative with respect to both existing assets and new contributions of participants or beneficiaries, plan fiduciaries must comply with the notice requirements of the regulation. It is the view of the Department that any participant or beneficiary, following receipt of a notice in accordance with the requirements of this regulation, may be treated as failing to give investment direction for purposes of paragraph (c)(2) of § 2550.404c–5, without regard to whether the participant or beneficiary was defaulted into or elected to invest in the original default investment vehicle of the plan. Under such circumstances, and assuming all other conditions of the regulation are satisfied, fiduciaries would obtain relief with respect to investments on behalf of those participants and beneficiaries in existing or new default investments that constitute qualified default investment alternatives.

Several commenters requested guidance on the effective date of the regulation. While section 404(c)(5) of ERISA is effective for plan years beginning after December 31, 2006, relief under section 404(c)(5) is conditioned on, among other things, the investment of a participant's contributions and earnings ''in accordance with regulations issued by the Secretary.'' See section 404(c)(5)(A). Accordingly, relief under section 404(c)(5) is conditioned on compliance with the provisions of this final regulation, which provide relief only for investments on behalf of participants and beneficiaries who were furnished a notice in accordance with paragraphs (c)(3) and (d) of § 2550.404c–5 and who did not give investment directions to the plan after the effective date of the regulation. Although the regulation only provides relief for investments in qualified default investment alternatives when participants and beneficiaries do

not give investment directions after the effective date of the regulation, compliance with the notice requirements may be achieved by providing notice in accordance with the regulation before its effective date.

With regard to the possible assessment of market value adjustments or similar withdrawal penalties that may result from a fiduciary's decision to move assets to a qualified default investment alternative, the Department reminds fiduciaries that such decisions must be made in compliance with ERISA's prudence and exclusive purpose requirements. These decisions cannot be based solely on a fiduciary's desire to take advantage of the limited liability afforded by this regulation, without regard to the financial consequences to the plan's participants and beneficiaries. In this regard, the Department notes that the final regulation does not change the status of an otherwise prudent default investment into an imprudent default investment. The Department has attempted to make clear in both the preamble and the operative language of the final regulation that the standards set forth therein are not intended to be the exclusive means by which fiduciaries might satisfy their responsibilities under the Act with respect to the investment of assets on behalf of participants and beneficiaries who do not give investment directions.

Further, as discussed above under Qualified Default Investment Alternatives, the Department modified the regulation to provide relief for investments made in stable value products or funds prior to the effective date of the regulation. This modification is intended to assist plan fiduciaries who may be limited by the terms of investment contracts for such products or funds from unilaterally reinvesting assets on behalf of participants who fail to direct their investments.

One commenter requested that the Department make clear that once a participant or beneficiary directs any portion of his or her account balance, the participant or beneficiary is considered to have directed the investment of the entire account. The Department agrees that investment direction by a participant or beneficiary with respect to a portion of his or her account balance may be treated as a decision to retain the remainder of the account balance as currently invested, thus permitting the responsible fiduciary to consider the entire account balance as directed by the participant or beneficiary.

A number of commenters requested that the Department clarify the interrelationship between ERISA section 404(c)(4)(A)—the ''mapping'' provisions—and section 404(c)(5) and this regulation. The most obvious difference between the two sections is the circumstances under which relief is available. The relief provided by section 404(c)(4) is limited to circumstances when a plan undertakes a ''qualified change in investment options'' within the meaning of section 404(c)(4)(B). In contrast, section 404(c)(5) and this regulation can apply to changes in investment options and to the selection of initial plan investments when participants or beneficiaries do not give investment directions. Section 404(c)(4) applies only when the investment option from which assets are being transferred was chosen by the participant or beneficiary (see section 404(c)(4)(C)(iii)). Section 404(c)(5), unlike 404(c)(4), can apply to the selection of an investment alternative by the plan fiduciary in the absence of any affirmative direction by the participant or beneficiary. While the fiduciary relief afforded by section 404(c)(4) and section 404(c)(5) is similar, relief under section 404(c)(4) requires that new investments be reasonably similar to the investments of the participant or beneficiary immediately before the change, whereas relief under section 404(c)(5) requires investment to be made in qualified default investment alternatives. In the context of changing investment options under the plan, ERISA sections 404(c)(4) and 404(c)(5) provide fiduciaries flexibility in implementing such changes.

Preemption

Section 902 of the Pension Protection Act added a new section 514(e)(1) to ERISA providing that, notwithstanding any other provision of section 514, title I of ERISA shall supersede any State law that would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. Section 902 further added section 514(e)(2) to ERISA defining the term ''automatic contribution arrangement'' as an arrangement under which a participant: May elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash; is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage); and under which such contributions are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of ERISA. In the preamble to the proposed regulation, the Department specifically invited comment on whether, and to what extent, regulations would be helpful in addressing the preemption provision of section 514(e).

In response to the Department's invitation, commenters indicated that, while the application of the preemption provisions should be clarified, they did not believe it was necessary at this time for the Department to prescribe regulations establishing minimum standards for automatic contribution arrangements. Commenters also argued that ERISA preemption should extend to all prudent investments under an automatic contribution arrangement, not just those determined to be qualified default investment alternatives under the Department's regulation. In addition, commenters argued that preemption should not depend on compliance with all the requirements of the regulation under section 404(c)(5), noting that section 514(e) has an independent notice requirement. See section 514(e)(3).

In an effort to clarify the application of the preemption provisions of section 514(e), the final regulation includes a new paragraph (f). As set forth in the regulation, section 514(e) broadly preempts any State law that would restrict the use of an automatic contribution arrangement. After reviewing the text and purpose of section 514(e), the Department concluded that Congress intended to supersede the application of such laws to any pension plan that provides for an automatic contribution arrangement, regardless of whether such plan includes an automatic contribution arrangement as defined in the regulation. This conclusion is reflected in paragraph (f)(2) of the final regulation.

With the enactment of section 514(e), Congress intended to occupy the field with respect to automatic contribution arrangements.[9] Thus, section 514(e) of ERISA does not merely supersede State laws ''insofar'' as any particular plan complies with this final regulation, but rather generally supersedes any law ''which would directly or indirectly

[9] This interpretation of section 514(e) is consistent with the Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006, a document prepared by the staff of the Joint Committee on Taxation. That document states, on page 230: ''The State preemption rules under the bill are not limited to arrangements that meet the requirements of a qualified enrollment feature.''

prohibit or restrict the inclusion in any plan of an automatic contribution arrangement.'' This language stands in marked contrast to the familiar language of section 514(a) of ERISA, which supersedes State laws only ''insofar'' as they satisfy the ''relates to'' standard set forth in that section.[10]

Additionally, Congress gave the Department discretion in section 514(e)(1) to determine whether and to what extent preemption should be conditioned on plan compliance with minimum standards, stating that ''[t]he Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection [on preemption] to apply in the case of such arrangement.'' Pursuant to this grant of discretionary authority, the Department has concluded, at this time, that it should not tie preemption to minimum standards for default investments. The Department, therefore, specifically provides in paragraph (f)(4) that nothing in the final regulation precludes a pension plan from including an automatic contribution arrangement that does not meet the conditions of paragraph (a) through (e) of the regulation. While relief under ERISA section 404(c)(5) is available only to plans that comply with the regulation, the Department has determined that it would be inappropriate to discourage plan fiduciaries from selecting default investments that are not identified in the regulation. State laws that hinder the use of any other default investments would be inconsistent with this determination, and with the discretionary authority Congress vested in the Department over the scope of ERISA preemption.

Finally, in an effort to eliminate the need for multiple notices by plan administrators of automatic contribution arrangements, paragraph (f)(3) of the final regulation specifically provides that the administrator of an automatic contribution arrangement within the meaning of paragraph (f)(1) shall be considered to have satisfied the notice requirements of section 514(e)(3) if notices are furnished in accordance with paragraphs (c)(3) and (d) of the regulation. Accordingly, satisfaction of the notice requirements under section 404(c)(5) and this regulation also will serve to satisfy the separate notice requirements set forth in section 514(e)(3) for automatic contribution arrangements.

Enforcement

Section 902 of the Pension Protection Act amended section 502(c)(4) of ERISA to provide that the Secretary of Labor may assess a civil penalty against any person for each violation of section 514(e)(3) of ERISA. Implementing regulations will be developed in a separate rulemaking.

D. Effective Date

This final regulation will be effective 60 days after the date of its publication in the **Federal Register**.

E. Regulatory Impact Analysis

Summary

This regulation is expected to have two major economic consequences. Default investments will be directed more toward higher-return portfolios, boosting average investment returns, and automatic enrollment provisions will become more common, boosting participation. Both of these effects will increase average retirement savings, especially among workers who are younger, have lower earnings and/or more frequent job changes. A substantial number of individuals will enjoy significant increases in retirement income, while a few may experience decreases if the introduction of automatic enrollment slows their saving or if their default investment returns are particularly poor. The magnitude of these effects will be large in absolute terms and proportionately large for many directly affected individuals.

The regulation's effects will be cumulative and gradual, and their magnitude will depend on plan sponsor and participant choices. The Department has developed low- and high-impact estimates to illustrate a range of potential long-term effects.

By 2034 the regulation (together with the automatic enrollment provisions of the Pension Protection Act) is predicted to increase aggregate annual 401(k) plan contributions by between 2.6 percent and 5.1 percent, or by $5.7 billion to $11.3 billion (expressed in 2006 dollars). It is predicted to increase aggregate account balances by between 2.8 percent and 5.4 percent, or by $70 billion to $134 billion. Between 83 percent and 77 percent of net new 401(k) accumulations will be preserved for retirement rather than cashed out early.

Low-impact estimates indicate that the regulation will increase pension income by $1.3 billion per year on aggregate for 1.6 million individuals age 65 and older in 2034, but decrease it by $0.3 billion per year for 0.6 million. High-impact estimates suggest that pension income will increase by $2.5 billion for 2.5 million and fall by $0.6 billion for 0.9 million. Impacts on retirement income will be larger farther in the future, reflecting the fact that automatic enrollment and default investing disproportionately affect young workers.

A substantial portion of the increase in retirement savings will be attributable directly to the movement of default investments away from stand-alone, fixed income capital preservation vehicles and toward qualified default investment alternatives that provide for capital appreciation as well as capital preservation. The majority of the increase, however, will be attributable to the proliferation of automatic enrollment.

The Department believes that the net increase in retirement savings will translate into a net improvement in welfare. There is substantial risk that savings will fall short relative to many workers' retirement income expectations, especially in light of increasing health costs and stresses on defined benefit pension plans and the Social Security program. The regulation will help reduce that risk. An increase in retirement savings additionally is likely to promote investment and long-term economic productivity and growth. The Department therefore concludes that the benefits of this regulation will justify its costs.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal

[10] Section 514(a) of ERISA provides, in pertinent part, that ''the provisions of this title and title IV shall supersede any and all State laws *insofar* as they may now or hereafter relate to any employee benefit plan * * *.'' Emphasis added.

mandates, the President's priorities, or the principles set forth in the Executive Order. This action is significant under section 3(f)(1) because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, the Department has undertaken, as described below, an analysis of the costs and benefits of the regulation. The Department believes that the regulation's benefits justify its costs.

Regulatory Flexibility Act

The Department certified that the proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. 71 FR 56806, 56815 (Sept. 27, 2006). In explaining the basis for this certification, the Department noted that 10 to 20 percent of small participant directed defined contribution plans (28,000 to 56,000 plans) might adopt automatic enrollment programs as a result of the regulation. Consequently, some of the employers sponsoring such plans may have to make additional matching contributions (up to $100 million to $300 million annually). The Department expects that the amount of such additional contributions to small plans would be proportionately similar to those to large plans. The Department did not expect the proposed regulation to have any adverse consequences for small plans or their sponsors because all the factors at issue, including the payment of matching contributions, the adoption of automatic enrollment programs, and compliance with the regulation are voluntary on the part of the plan sponsor.

The Department received one comment regarding the proposed regulation's potential effect on small entities. The commenter believes that certain types of mutual funds that would be qualified default investment alternatives under paragraph (e)(4)(i) (e.g., life-cycle or target-retirement date funds) sometimes invest in other types of mutual funds. According to the commenter, the investment advisers for the life-cycle or target-retirement-date funds may have an incentive to skew the fund's allocation toward sub funds that generate higher fees than to funds that would be most appropriate for the age or expected retirement date of the affected participants. The commenter stated that fiduciaries of small plans wishing to use the safe harbor would need to expend disproportionately more resources than large plan fiduciaries in making sure that the asset allocations (and thus, the corresponding fee structures) are not tainted by conflicts of interest. Specifically, the commenter was concerned that unlike larger plans which could conduct analyses of the neutrality of asset allocations in-house, small plans would have to expend resources on using outside consultants to conduct such analyses or face potential liability for a failure to do so. The commenter mentioned that some funds are willing to indemnify fiduciaries of large plans from any liability associated with choosing such funds. The commenter suggested that the Department add measures to mitigate the likelihood of conflicts, such as requiring that such funds allocate assets pursuant to independent algorithms and require equal treatment for small plan fiduciaries with regard to indemnification.

Plan fiduciaries must take into account potential conflicts of interest and the reasonableness of fees in choosing and monitoring any investment option for a plan, whether covered under the safe harbor or not. This obligation flows from the fiduciary duties of prudence and loyalty to the participants set out in ERISA section 404(a)(1). The regulation imposes no new requirements for selecting qualified default investment alternatives. For large or small plans, the duty to evaluate a plan investment option exists regardless of whether the plan includes an automatic enrollment feature or whether the fiduciary is seeking to comply with this regulation. Thus, the Department continues to believe that this regulation would not have a significant effect on a substantial number of small entities.

The Department considered the commenter's suggestions. Adopting them, however, could limit plans' choices or increase the cost of qualified default investment alternatives. The regulation does not prevent plan fiduciaries from taking features such as independent algorithms into account in choosing qualified default investment alternatives. If it determines that a widespread need for such assistance exists, the Department may consider providing guidance for small plans regarding prudent selection of qualified default investment alternatives.

The Department has also considered the changes made in this document from the proposed regulation. These changes, including the modified notice requirement, allowing trustees and certain plan sponsors to manage qualified default investment alternatives, and the addition of a temporary qualified default investment alternative are discussed more fully earlier in this document. They do not affect the Department's determination regarding the regulation's impact on small entities. Therefore, the Department recertifies its earlier conclusion that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the proposed regulation solicited comments on the information collections included in the proposed regulation. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review.[11] Although no public comments were received that specifically addressed the paperwork burden analysis of the information collections, the comments that were submitted, and which are described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. The Department took into account such public comments in connection with making changes to the proposal, analyzing the economic impact of the proposals, and developing the revised paperwork burden analysis summarized below.

In connection with publication of this final rule, the Department has submitted an ICR to OMB for its request of a new collection. The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Department intends to publish a notice announcing OMB's decision upon review of the Department's ICR.

A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.* PRA ADDRESSEE: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

The regulation provides certain specified relief from fiduciary liability for fiduciaries who make investment decisions on behalf of participants and beneficiaries in individual account

[11] On Nov. 20, 2006, OMB issued a notice (ICR Reference No. 200608–1210–003) that it would not approve the Department's request for approval of the information collection provisions until after consideration of public comment on the proposed regulation and promulgation of a final rule, describing any changes.

pension plans that provide for participant direction of investments when such participants and beneficiaries fail to direct the investment of their account assets. The regulation describes conditions under which a participant or beneficiary who fails to provide investment direction will be treated as having exercised control over assets in his or her account under an individual account plan as provided in section 404(c)(5)(A) of ERISA. The regulation requires that the assets of non-directing participants or beneficiaries be invested in one of the qualified default investment alternatives described in the regulation and that certain other specified conditions be met.

The regulation imposes two separate disclosure requirements to participants and beneficiaries that are conditions to the relief created by the final regulation, as follows: (1) The plan must provide an initial notice containing specified information to any individual whose assets may be invested in a qualified default investment alternative generally at least 30 days prior to the date of plan eligibility (or on or before the date of plan eligibility if the participant is permitted to make a withdrawal under Code section 414(w)) and thereafter annually at least 30 days before the beginning of each plan year; and (2) the plan must provide certain materials that it receives relating to participants' and beneficiaries' investments in a qualified default investment alternative. The ''pass-through'' materials that must be provided are those specified in the Department's regulation under ERISA section 404(c) at 29 CFR 2550.404c–1(b)(2)(i)(B)(1)(viii) and (ix) and 29 CFR 404c–1(b)(2)(i)(B)(2). The information collection provisions of this regulation are intended to ensure that participants and beneficiaries who are provided the opportunity to direct the investment of their account balances, but who do not do so, are adequately informed about the plan's provisions for default investment and about investments made on their behalf under the plan's default provisions.

The estimates of respondents and responses on which the Department's burden analysis is based are derived primarily from the Form 5500 Series filings for the 2004 plan year, which are the most recent reliable data available to the Department.[12] The burden for the preparation and distribution of the disclosures is treated as an hour burden. Additional cost burden derives solely from materials and postage. It is assumed that electronic means of communication will be used in 38 percent of the responses pertaining to the initial and annual notices and that such communications will make use of existing systems. Accordingly, no cost has been attributed to the electronic distribution of information.

Annual Notice—29 CFR 2550.404c–5(c)(3). The regulation requires that notice be provided initially, before any portion of a participant's or beneficiary's account balance is invested in a qualified default investment alternative, and annually thereafter. The notice generally must describe: (1) The circumstances under which assets in the individual account of a participant or beneficiary may be invested on behalf of the participant or beneficiary in a qualified default investment alternative; and, if applicable, an explanation of the circumstances under which elective contributions will be made on behalf of a participant, the percentage of such contributions, and the right of the participant to elect not to have such contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage); (2) the right of participants and beneficiaries to direct the investment of assets in their accounts; (3) the qualified default investment alternative, including its investment objectives, risk and return characteristics (if applicable), and fees and expenses; (4) the participants' and beneficiaries' right to direct the investment of the assets to any other investment alternative offered under the plan, including a description of any applicable restrictions, fees or expenses in connection with such a transfer; and (5) where participants and beneficiaries can obtain information about the other investment alternatives available under the plan.

The Department estimates that 424,000[13] participant directed individual account pension plans will prepare and distribute notices to 62,544,000 eligible workers, participants and beneficiaries in the first year in which this regulation becomes applicable. Preparation of the notice in the first year is estimated to require one-half hour of legal professional time for each plan, for a total aggregate estimate of 212,000 burden hours. For the 62 percent of participants and beneficiaries who will receive the notice by mail (38,777,000 individuals), distribution of the notice is estimated to require an additional 310,000 hours of clerical time, based on an estimate of one-half minute of clerical time per notice. No additional burden hours are attributed to the distribution of the notice to the remaining 38 percent of participants and beneficiaries who will receive this notice electronically (23,767,000 individuals). The total annual burden hours estimated for the notice in the first year, therefore, are 522,000. The equivalent cost for this burden hour estimate is $30,232,000 (legal professional time is valued at $106 per hour, and clerical time is valued at $25 per hour).[14]

In addition to burden hours, the Department has estimated annual costs attributable to the notice for the first year, based on materials and postage, at $19,776,000. This comprises the material cost for a two-page notice ($.10 per notice) to 38,777,000 participants and beneficiaries (62 percent of 62,544000 participants and beneficiaries), which equals $3,878,000, plus postage at $0.41 per mailing, which equals $15,899,000. Total annual costs for the notice in the first year are therefore estimated at $19,776,000.

In years subsequent to the first year of applicability, the Department estimates that notices will be prepared only by newly established participant directed individual account pension plans and plans that change their choice of qualified default investment alternative. For purposes of burden analysis, the Department has assumed that one-third (1/3) of all participant directed individual account plans (141,000 plans) will prepare and distribute new or updated notices to all participants and beneficiaries, requiring 24 minutes of legal professional time per notice. The preparation of these notices in each subsequent year is estimated to require 57,000 hours. However, the number of participants receiving notices stays the same. As in the calculation for the initial year, distribution to the 62 percent of participants and beneficiaries who will receive the notice by mail (38,777,000 individuals) will require 310,000 hours and $19,776,000 additional materials and postage cost. (As for the first year, the Department has assumed that electronic distribution of the notice in subsequent years will not add any significant additional paperwork burden.)

Based on those assumptions, the Department estimates that the total

[12] The Department does not anticipate an increase in the number of Form 5500 filings merely due to the changes to the Form 5500 for 2007 to 2009.

[13] All numbers used in this paperwork burden estimate have been rounded to the nearest thousand.

[14] EBSA estimates based on the Bureau of Labor Statistics, National Occupational Employment Survey (May 2005) and the Bureau of Labor Statistics, Employment Cost Index (Sept. 2006).

burden hours for notices under this regulation in each year after the first year of applicability will fall to 367,000 hours. The equivalent cost of such an hour burden (using the same assumptions as for the first year) is $13,749,000. The total cost burden estimated for subsequent years for the notice will remain at $19,776,000.

Pass-through Material—29 CFR 2550.404c–5(c)(4). Under the regulation, the fiduciary shall qualify for the relief described in paragraph (b)(1) of the final regulation if a fiduciary provides material to participants and beneficiaries as set forth in paragraphs (b)(2)(i)(B)(1)(viii) and (ix), and paragraph (b)(2)(i)(B)(2) of the 404(c) regulation. In addition, plans must be prepared to provide certain information on request and must therefore maintain such information in updated form in order to comply. The paperwork burden for the pass-through disclosure requirements calculated here does not include pass-through disclosure burden for section 404(c) plans, as these disclosures for section 404(c) plans were considered in the renewal to OMB Control No. 1210–0090.[15]

The regulation imposes this requirement only with respect to participants and beneficiaries who have an investment in a qualified default investment alternative that was made by default. In conformity with the assumptions underlying the other economic analyses in this preamble, the Department has assumed that, at any given time, 5.3 percent of participants and beneficiaries in participant directed individual account pension plans (3,794,000 individuals) will have default investments. Of these, 1,072,000 individuals are invested in participant directed individual account pension plans that are not section 404(c) plans. For purposes of this burden analysis, the Department has also assumed that plans will receive materials that must be passed through the participants and beneficiaries on a quarterly basis. This assumption takes into account that many, although not all, plans will receive quarterly financial statements and prospectuses, and that plans will also receive other pass-through materials on occasion. These two factors result in an estimate of 4,286,000 responses (distributions of pass-through materials) per year. Duplication and packaging of the pass-through material is estimated to require 1.5 minutes of clerical time per distribution, for an annual hour burden estimate of 107,000 hours of clerical time. The equivalent cost of this hour burden is estimated at $2,679,000. Additional cost burden for the pass-through of material is estimated to include paper cost (40 pages of material yearly per participant or beneficiary) and postage ($.58 per mailing) at $4,629,000 annually for 4 distributions per participant or beneficiary with a default investment.

Plans also need to maintain information in order to provide certain information on request. This preparation is estimated to require one hour of clerical time for each of the 162,000 newly affected plans, for a total of 162,000 burden hours. The Department assumes that, on average, plans will make one disclosure upon request every year and that it takes one-half minute of clerical time per disclosure to send out the materials, requiring about 4,000 hours of clerical time. In total, the preparation and sending of information upon request requires 166,000 burden hours with equivalent costs of $4,145,000. Additional cost burden for the material is estimated to include paper cost (20 pages of material yearly per information request) and postage ($0.89 per mailing) at $306,000.[16]

In total, the Department estimates that providing pass-through disclosures to non-directing participants and beneficiaries under this regulation will require annual burden hours of approximately 273,000 hours (with equivalent costs of $6,824,000) and total costs of $4,935,000.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Participant Directed Individual Account Plans.

OMB Number: 1210–AB10.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 424,000.

Responses: 66,991,000.

Frequency of Response: Annually; occasionally.

Estimated Total Annual Burden Hours: 795,000 (first year).

Estimated Total Annual Burden Cost: $24,711,000 (first year).

Congressional Review Act

This notice of final rulemaking is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and therefore has been transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Pursuant to the provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, that may impose an annual burden of $100 million or more, adjusted for inflation.

Economic Impacts

By 2034 the regulation (together with the automatic enrollment provisions of the Pension Protection Act) is predicted to increase aggregate account balances by between 2.8 percent and 5.4 percent, or by $70 billion to $134 billion.

Investment Mix

A large but declining proportion[17] of 401(k) plans currently direct default investments exclusively to fixed income capital preservation vehicles such as money market or stable value funds. By reducing risks attendant to fiduciary responsibility and liability, this regulation is expected to encourage more plans to direct default investments to vehicles that include a mix of equity and fixed income instruments and thereby provide the potential for capital appreciation as well as capital preservation.

As a result of this regulation, it is estimated that in 2034, 401(k) plan investments in qualified default investment alternative-type vehicles (expressed in 2006 dollars) will increase by between $65 billion and $116 billion. The portion of this estimated increase that is attributable directly to the redirection of default investments is between $18 billion and $24 billion. The rest is attributable to increased contributions, which are discussed below.[18]

[15] See 71 FR 64564 (Nov. 2, 2006). The paperwork burden as calculated for section 404(c) plans assumes that plans send pass-through disclosures to all participants and beneficiaries in section 404(c) plans, not only to the ones that are actively directing their investments.

[16] The burden arising from these disclosure requirements will be the same in subsequent years.

[17] Various surveys estimate the proportion at 40 percent (Profit Sharing/401(k) Council of America, 49th Annual Survey of Profit Sharing and 401(k) Plans (2006) at 39), 41 percent (Deloitte Consulting, Annual 401(k) Benchmarking Survey, 2005/2006 Edition (2006) at 7), and 21 percent (Vanguard, How America Saves 2006 (Sept. 2006) at 26). Surveys also reveal a trend away from capital preservation defaults toward investment vehicles like those included as qualified default investment alternatives for future contributions under this regulation.

[18] These estimates pertain only to default investments made on behalf of defaulted participants under automatic enrollment programs. The default investment regulation is not so limited. Therefore, these estimates are likely to omit some of the redirection of default investments that will occur under the regulation.

Investment Performance

Historically, over long time horizons, diversified portfolios that include equities have tended to deliver higher returns than those consisting only of lower risk debt instruments.[19] It therefore is widely believed to be advantageous to invest retirement savings in diversified portfolios that include equity.[20]

As noted above, this regulation is expected to encourage the redirection of default investments from stand-alone, low-risk capital preservation instruments to diversified portfolios that include equities. This in turn is expected to improve investment results for a large majority of affected individuals, increasing aggregate account balances by an estimated $5 billion to $7 billion in 2034.

In deriving these estimates, in response to public and peer reviewer comments, the Department refined its assumptions regarding investment performance relative to those relied on in its estimates of the proposed regulation's effects. This is explained further below under headings ''Basis of Estimates'' and ''Peer Review.''

Automatic Enrollment

Automatic enrollment programs are growing in popularity. These programs covered only about 5 percent of workers eligible for 401(k) plans in 2002,[21] but the number may now be as high as 24 percent [22] and could reach 35 percent in the near future, absent this final rule.[23]

The Department expects and intends that this regulation, together with the automatic enrollment provisions of the Pension Protection Act, will promote wider implementation of automatic enrollment programs. The regulation will help alleviate fiduciary concerns that might otherwise discourage implementation of automatic enrollment programs. It will also make it possible for plan sponsors to take advantage of Pension Protection Act provisions that waive certain Internal Revenue Code bars against discrimination in favor of highly compensated employees and that preempt state laws unfriendly to automatic enrollment programs. As a result of the regulation, in the near future automatic enrollment programs may cover 50 percent to 65 percent of 401(k)-eligible workers rather than 35 percent.[24]

Participation

Analyses of automatic enrollment programs demonstrate that such programs increase participation. The increase is most pronounced among employees whose participation rates otherwise tend to be lowest, namely lower-paid, younger and shorter-tenure employees.[25] Automatic enrollment programs increase many such employees' contribution rates from zero to the default rate, often supplemented by some employer matching contributions. These additional contributions tend to come early in the employees' careers and therefore can add disproportionately to retirement income as investment returns accumulate over a long period. However, there is also evidence that automatic enrollment programs can have the effect of lowering contribution rates for some employees below the level that they would have elected absent automatic enrollment. Current surveys indicate that the default contribution rates are typically set at 3 percent of salary.[26] Some employees who might otherwise have actively enrolled in a plan (either at first eligibility or later) and elected a higher contribution rate may instead permit themselves to be enrolled at the default rate. [27]

Plans implementing automatic enrollment programs may increase their participation rates on average from approximately 70 percent to perhaps 90 percent. Consequently, the Department estimates that this regulation will increase overall 401(k) participation rates from 73 percent to between 77 percent and 80 percent.[28] Aggregate annual contributions in 2034 are expected to grow on net by between $5.7 billion and $11.3 billion (expressed in 2006 dollars). These and related estimates are summarized in Table 1 below.

[19] See, e.g., Ibbotson Associates, Stocks, Bonds, Bills and Inflation, 2006 Yearbook (2006).

[20] See, e.g., U.S. Securities and Exchange Commission, Beginners' Guide to Asset Allocation, Diversification, and Rebalancing (May 2007), at *http://www.sec.gov/investor/pubs/assetallocation.htm*; and Stephen P. Utkus, Selecting a Default Fund for a Defined Contribution Plan, Vanguard Center for Retirement Research, Volume 14 (June 2005) at 6.

[21] U.S. Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in Private Industry in the United States, 2002–2003, Bulletin 2573 (Jan. 2005).

[22] EBSA estimate. The proportion of plans in various size classes that provide automatic enrollment was taken from Profit Sharing/401(k) Council of America, 49th Annual Survey of Profit Sharing and 401(k) Plans (2006) at 38. EBSA took a weighted average of these proportions, reflecting the distribution of 401(k) participants across the plan size classes, as estimated by EBSA based on annual reports filed by plans with EBSA.

[23] The incidence of automatic enrollment appears to be growing. According to one series of surveys automatic enrollment spread from 8.4 percent of plans in 2003 to 16.9 percent in 2005 (Profit Sharing/401(k) Council of America, 49th Annual Survey of Profit Sharing and 401(k) Plans (2006) at 38). Another found that automatic enrollment spread from 15 percent of plans in 2003 to 23 percent in 2005 with an additional 29 percent considering it for the future (Deloitte Consulting, 2003 Annual 401(k) Benchmarking Survey (2004) at 25 and Deloitte Consulting, Annual 401(k) Benchmarking Survey 2005/2006 Edition (2006) at 7). According to yet another, it grew from 14 percent in 2003 to 24 percent in 2006, with 23 percent of the remainder ''very likely'' and 25 percent ''somewhat likely'' to begin automatic enrollment within the year (Hewitt Associates LLC, Survey Findings: Trends and Experiences in 401(k) Plans, 2005 (2005) at 13, and Hewitt Associates LLC, Survey Findings: Hot Topics in Retirement, 2006 (2006) at 3).

[24] The Department believes these figures reasonably illustrate a range of possible outcomes. The Department is confident that the regulation will increase the incidence of automatic enrollment. According to one survey, among plans that currently are somewhat or very unlikely to offer automatic enrollment in the future, 36 percent cite the need for the Department to identify appropriate default investments, 33 percent cite the need for preemption of unfriendly state laws, and 30 percent cite the need for relief from nondiscrimination requirements (Hewitt Associates LLC, Survey Findings: Hot Topics in Retirement, 2006 (2006) at 5).

[25] According to the Department's low- and high-impact estimates (respectively), under the regulation, active (non-defaulted) participants will number between 32 million and 33 million in 2034. Their ages will average between 44.2 and 44.1 years, and their pay will average between 160 percent and 158 percent of average earnings calculated by the Social Security Administration. Defaulted participants will number between 4.2 million and 5.4 million. In contrast to active participants, their ages will average between 34.0 and 34.1 years, and their pay will average between 109 percent and 108 percent of average pay in Social Security covered employment.

[26] It is possible that in the future more plans will provide for higher or escalating default contribution rates. The Pension Protection Act waives certain bars against discrimination in favor of highly compensated employees for 401(k) plans with automatic enrollment that satisfy certain conditions. One such condition generally provides that a participant's default contribution rate must escalate to at least 6 percent not later than his fourth year of participation.

[27] See, e.g., James J. Choi, David Laibson, Brigette C. Madrian and Andrew Metrick, Saving for Retirement on the Path of Least Resistance (updated draft analysis, July 19, 2004) at 56–57, Figures 2A–2D; and James J. Choi, David Laibson and Brigitte C. Madrian, Plan Design and 401(k) Savings Outcomes (written for the National Tax Journal Forum on Pensions, June 2004) at 11.

[28] These numbers are rounded to the nearest percentage point.

Table 1: Estimated Effect of Regulation on 401(k) Participation and Contributions in 2034
(Dollar amounts expressed in billions of 2006 dollars)

	Low Impact	High Impact
Percentage point increase in participation rate of 401(k)-eligible employees	4%	8%
Added annual contributions	$8.9	$17.4
Discouraged annual contributions	$3.2	$6.0
Net additional contributions	$5.7	$11.3
Increase in aggregate account balances	$70	$134

Preservation

New employee contributions attributable to automatic enrollment will be attributable disproportionately to younger, lower-paid, shorter-tenure workers.

Some such workers, who absent automatic enrollment would have delayed participation, will begin contributing earlier and thereby accumulate larger balances. The investment of these contributions in qualified default investment alternatives, rather than in capital preservation vehicles, will further enlarge account balances on average. Larger balances are more likely to be preserved for retirement. Therefore it is possible that the regulation will increase the proportion of 401(k) accounts that are preserved.[29]

On the other hand, other such workers may accumulate only small accounts before leaving their jobs. Historically, younger, lower-paid workers with small accounts have tended disproportionately to cash out their accounts upon job change rather than preserve them in tax-deferred retirement accounts. It is therefore also possible that, by encouraging automatic enrollment, the proportion (but not the total amount) of 401(k) accounts preserved for retirement could decrease.

The Department estimates that these effects will nearly offset one another. Workers will leave an estimated 4.3 million 401(k)-eligible jobs in 2033. As a result of this regulation (together with the automatic enrollment provisions of the Pension Protection Act), the number leaving with positive account balances will grow from 2.30 million to between 2.45 million and 2.61 million. The proportion of those leaving with positive accounts that preserve their accounts for retirement will fall slightly from 61.0 percent to between 60.4 percent and 59.7 percent, and the proportion of the account balances preserved will fall from 85.9 percent to between 85.8 percent and 85.4 percent. The regulation's marginal effect on the preservation of account balances can be illustrated by comparing estimated net increases in account-holding job leavers and their account balances with estimated net increases in preserved accounts. The proportion of net new job leavers with account balances that preserve their accounts is estimated to be approximately 50 percent, while the proportion of net new job-leaver accounts that is preserved is estimated to be 83 percent to 77 percent.

Retirement Income

Low-impact estimates suggest that the regulation will increase pension income by $1.3 billion per year on aggregate for 1.6 million individuals age 65 and older in 2034 (expressed in 2006 dollars), but decrease it by $0.3 billion per year for 0.6 million. High-impact estimates suggest that average annual pension income will increase by $2.5 billion for 2.5 million and fall by $0.6 million for 0.9 million. These estimates are summarized in Table 2 below. Impacts on retirement income will be larger farther in the future, reflecting the fact that automatic enrollment and default investing disproportionately affect young workers.

[29] There will be other, smaller effects. Because larger accounts are more likely to be preserved, any effect of the regulation on account balances may also affect the preservation rate. As noted below, while automatic enrollment increases contributions for many workers, it may decrease them for a few. Likewise, while movement from capital preservation investments to qualified default investment alternatives will boost investment returns for many, it may reduce returns for a few. All of these effects in turn affect account balances and preservation rates. The Department's estimates account for all of these effects.

Table 2: Effect of Regulation on Annual Pension Income of Individuals Age 65+ in 2034 (Expressed in 2006 Dollars)

Career Pay Quartile	Number with Gains (000s)	Aggregate Gain ($Millions)	Number with Losses (000s)	Aggregate Loss ($Millions)
Low Impact				
All	1,594	$1,330	589	$328
Q1	285	$111	100	$18
Q2	390	$226	142	$52
Q3	434	$343	164	$84
Q4	485	$650	183	$174
High Impact				
All	2,541	$2,465	856	$637
Q1	457	$206	145	$41
Q2	635	$451	206	$97
Q3	686	$611	240	$163
Q4	763	$1,198	265	$336

The regulation is estimated to have distributional consequences, narrowing somewhat the distribution of pension income across earnings groups. Among all individuals age 65 or older in 2034, for example, those in the lowest lifetime earnings quartile would receive just 5 percent of pension income absent the regulation, but they will receive 9 percent of net gains from the regulation. The amount they gain will exceed the amount lost by a factor of five or six (see Table 3 below).

Table 3: Distributional Effect of Regulation on Annual Pension Income of Individuals Age 65+ in 2034 (Expressed in 2006 Dollars)

Career Pay Quartile	Low Impact				High Impact			
	Pension Income Shares		Gain/Loss Ratios		Pension Income Shares		Gain/Loss Ratios	
	Base-line	Net Gain	#	$	Base-line	Net Gain	#	$
Q1	5%	9%	2.8	6.1	5%	9%	3.2	5.1
Q2	12%	17%	2.8	4.3	12%	19%	3.1	4.6
Q3	23%	26%	2.6	4.1	23%	24%	2.9	3.7
Q4	60%	48%	2.7	3.7	60%	47%	2.9	3.6

Administrative Cost

Plan sponsors may incur some administrative costs in order to meet the conditions of the regulation. The Department generally expects such costs to be low. Any changes to plan provisions or procedures necessary to satisfy the regulation's conditions are likely to be no more extensive than those associated with changes that plans implement from time to time in the normal course of business. The boundaries of the regulation are sufficiently broad to encompass a wide range of readily available and competitively priced investment products and services. It is likely that a large majority of participant directed plans already offer one or more investment options that would fall within the safe harbor. Costs attendant to the regulation's notice provisions can be mitigated by furnishing the notices together with other plan disclosures and/or through the use of electronic media. The requirement to pass through certain investment materials to participants and beneficiaries is the same as that already applicable to participant directed individual account plans operating in accordance with ERISA section 404(c). The Department's estimates of these costs are presented above under the heading Paperwork Reduction Act.

The regulation may indirectly prompt some plan sponsors to shoulder additional benefit costs. For example, it is expected that the regulation, by promoting the adoption of automatic enrollment programs, will have the indirect effect of increasing aggregate employer matching contributions in 2034 by between $1.7 billion and $3.4

billion (expressed in 2006 dollars). Adverse consequences are not expected because the adoption of automatic enrollment programs and the provision of matching contributions generally are at the discretion of the plan sponsor. Reliance on the regulation and, therefore, compliance with its provisions are also voluntary on the part of the plan sponsor.

Cost-Benefit Assessment

The Department believes that, by increasing average retirement income, the regulation will improve overall social welfare. There is mounting concern that many Americans have been preparing inadequately for retirement. Most workers are on track to have more retirement wealth than most current retirees, and recent declines in reported savings rates may not be cause for alarm in light of offsetting capital gains. Nonetheless, savings may fall short relative to workers' retirement income expectations, especially in light of increasing health costs and stresses on defined benefit pension plans and the Social Security program.[30] Because of these real risks, the Department believes that policies that increase retirement savings can increase welfare by helping workers secure retirement living standards that meet their expectations.

The regulation may also have macroeconomic consequences, which are likely to be small but positive. An increase in retirement savings is likely to promote investment and long-term economic productivity and growth. The increase in retirement savings will be very small relative to overall market capitalization. Therefore macroeconomic benefits are likely to be small. Based on the foregoing analysis and estimates, the Department believes that the benefits of this regulation will justify its costs.

Basis of Estimates

The Department estimated the effect of the regulation on 401(k) plan participation, contributions, account balances, investment mix, and early cash outs, and its effect on pension incomes in retirement, using a microsimulation model of lifetime pension accumulations known as PENSIM.[31] To produce the low and high impact estimates presented here, PENSIM was parameterized and applied as follows.

First, automatic enrollment was assigned randomly to 401(k) plan eligible employees to achieve incidences of 35 percent (baseline), 50 percent (low impact) and 65 percent. Next, participation and default participation rates were adjusted to reflect available research findings on these rates at various tenures in the presence and absence of automatic enrollment programs.[32] The default contribution rate was assumed to be 3 percent, which surveys indicate is the most common rate currently in use.[33]

Defaulted participants were assumed to invest their contributions as follows:[34] in the baseline estimates, either in a money market fund [35] (50 percent) or a qualified default investment alternative (50 percent); in the low- and high-impact estimates of the regulation's effects, all entirely to a qualified default investment alternative.[36] Active contributors were assumed to invest their contributions either in a qualified default investment alternative (75 percent), a U.S. Treasury bond fund (15 percent), or an even mix of the two (10 percent). Some employer contributions were assumed to be invested in company stock. Price inflation and real returns were estimated stochastically. Mean price inflation was assumed to be 2.8 percent, and mean real returns to money market funds, Treasury bond funds, and equity funds, respectively, were assumed to be 1.3 percent, 2.9 percent, and 4.9 percent. Deducted respectively from

[30] See generally U.S. Council of Economic Advisors, Economic Report of the President, February 2006 (2006).

[31] PENSIM was developed for the Department by the Policy Simulation Group as a tool for examining the macroeconomic and distributional implications of private pension trends and policies. Detailed information on PENSIM is available at *http://www.polsim.com/PENSIM.html.* Examples of PENSIM applications include comparisons of retirement income prospects for different generations contained in U.S. Government Accountability Office, Retirement Income: Intergenerational Comparisons of Wealth and Future Income, GAO–03–429 (Apr. 2003), and comparisons of pension income produced by traditional defined benefit pension plans and cash balance pension plans contained in U.S. Government Accountability Office, Pension Plans: Information on Cash Balance Pension Plans, GAO–06–42 (Oct. 2006).

[32] These findings were drawn from James J. Choi, David Laibson and Brigitte C. Madrian, Plan Design and 401(k) Savings Outcomes (written for the National Tax Journal Forum on Pensions, June 2004). The overall participation rate under automatic enrollment was adjusted upward to 90 percent.

[33] See e.g., Vanguard, How America Saves 2006 (Sept. 2006) at 26, Deloitte Consulting, Annual 401(k) Benchmarking Survey, 2005/2006 Edition (2006) at 7; Hewitt Associates LLC, Survey Findings: Trends and Experiences in 401(k) Plans, 2005 (2005) at 16; and Profit Sharing/401(k) Council of America, 49th Annual Survey of Profit Sharing and 401(k) Plans (2006) at 38.

[34] These estimates assume complete correspondence between automatic enrollment in 401(k) plans and default investing. Participants contributing by automatic enrollment are assumed to invest in the plan's default investment, while those who actively elect to contribute or who are in plans without elective contributions are assumed to actively invest. In practice neither of these assumptions will hold all of the time. Some participants who are automatically enrolled may nonetheless actively direct their investments. Some active contributors or participants in plans without elective contributions may choose to invest in the plan's default investment '' and this regulation may affect the incidence of such default investing. The Department did not attempt to estimate the extent or effect of default investing not associated with automatic enrollment.

[35] Some comments on the proposed regulation suggested that money market funds may not accurately represent the range of capital preservation instruments that might serve as default investments. In particular, according to some comments, stable value funds, relative to money market funds, offer higher returns with similarly low risk. The Department's estimates of the effects of the proposed regulation did not reflect this possibility. The Department agrees that stable value funds, if they perform as projected by their proponents, would outperform money market funds and thereby narrow (but not eliminate) the gains in average account balances and retirement income estimated to result from the shift toward qualified default investment alternatives. However, the Department believes that this possibility should be assessed with caution. Economic theory suggests that if financial markets are efficient, financial instruments with similar risk characteristics will provide similar returns. It therefore seems likely that there are important differences between money market and stable value funds beyond any difference in average returns. The Department understands that stable value products may come with a variety of features that may sometimes erode actual returns in response, for example, to certain plan sponsor actions that have the effect of shifting participant account allocations away from such products. Such stable value product features may sometimes dissuade plans or participants from making investment changes that they otherwise would, thereby imposing opportunity costs. The Department also understands that stable value products may expose investors to the credit risk of the fund vendor in ways that money market funds do not. This credit risk may be sensitive to changes in interest rates. In light of these considerations the Department continues to believe that, for purposes of assessing the impact of this regulation, money market funds reasonably represent available near risk-free investment instruments.

Nonetheless, in an effort to fully consider the potential implications of representations made in the comments, the Department tested the sensitivity of its low-impact estimates to representations regarding the investment performance of stable value products and assuming stable value products would be a substantial part of qualified default investments in the future. The sensitivity test puts aside the above considerations, and replaces money market fund performance with stylized stable value performance that is 200 basis points higher and equally variable. Under this test scenario, the regulation would increase aggregate account balances in 2034 by $68 billion (for comparison the Department's primary estimate is $70 billion), of which $3 billion (compared with $5 billon) is attributable to the shift of default investments from near risk-free instruments to qualified default investment alternatives. Among individuals age 65 and older in 2034, the number gaining retirement income would exceed the number losing by a ratio of 2.2 to 1 (compared with 2.7 to 1) and the aggregate amount gained would exceed that lost by a ratio of 3.8 to 1 (compared with 4.1 to 1).

[36] The qualified default investment alternative is represented by a portfolio resembling a life cycle fund, with 100 percent minus the participant's age in equity and the remainder in U.S. Treasury bonds.

these returns were assumed fees of 45, 45 and 75 basis points.

To estimate the effects of the regulation, the Department compared the baseline estimates to the low- and high-impact estimates.

For a more detailed explanation of the basis of these estimates, see Martin R. Holmer, ''PENSIM Analysis of Impact of Final Regulation on Defined—Contribution Default Investments'' (Policy Simulation Group, February 12, 2007). For additional estimation results, see Holmer, ''EBSA Automatic Enrollment RIA: Final Estimates'' (Policy Simulation Group, February 7, 2007). Both are available as part of the public docket associated with this regulation. Additional information on the Department's use of PENSIM in connection with this regulation is provided below, under the heading ''Peer Review.''

Sensitivity Tests

As noted above, the Department anticipates that this regulation (together with the automatic enrollment provisions of the Pension Protection Act) will have two major, beneficial economic consequences. Default investments will be directed toward higher-return instruments boosting average account performance, and automatic enrollment provisions will become more common boosting participation. In reaching its conclusion that the regulation will increase retirement income and improve social welfare, the Department took into account the potential sensitivity of its estimates to important economic and behavioral variables.

One variable involves the future incidence of automatic enrollment programs. As noted above the Department assessed this variable by comparing both low- and high-impact estimates with a common baseline. This variable affects the magnitude but not the net positive direction of the regulation's estimated effects.

The specific characteristics of future automatic enrollment programs constitute additional variables. For example, will new automatic enrollment programs cover only new employees, or existing non-participating employees as well? [37] The Department's estimates reflect automatic enrollment of new employees only. If plan sponsors automatically enroll existing employees the regulation's effects will be larger than estimated, especially in the near term. What default contribution rates will prevail? [38] The Department's primary estimates assume a uniform 3 percent default contribution rate. Higher contribution rates would increase the size of default participants' contributions, but might also discourage some from participating. To illustrate these potential effects the Department produced two alternative low-impact estimates substituting a 4.5-percent default contribution rate. One estimate assumed that the impact of automatic enrollment on participation was undiminished by the higher default contribution rate, the other that it was diminished by half. These were compared with the primary baseline estimate. Where the Department's primary low-impact estimate placed the increase in aggregate account balances in 2034 at $70 billion, the first alternative placed it at $123 billion, the second at $40 billion.

Additional variables concern what other changes plan sponsors might make to their plans. Plan sponsors implementing qualified default investment alternatives may make other changes to investment options or undertake new efforts to inform or influence participants' investment decisions. Plan sponsors that maintain or begin automatic enrollment programs may change other provisions of their plans, such as matching contribution formulas, eligibility or vesting provisions, loan programs, or distribution policies. Changes such as these could either augment or offset the effects of this regulation.

The investment advice and automatic enrollment provisions of the Pension Protection Act will promote activities and plan designs that are likely to augment the regulation's positive effects on retirement savings. Those provisions will help make investment advice available to more participants and will promote automatic enrollment programs with escalating default contribution rates, generous employer matching contributions and short vesting periods.

Default participants may make other changes in their savings behavior. Default participation might foster financial literacy or a taste for saving, which could augment the regulation's effect. Alternatively, default participants might offset their default savings by reducing other savings or taking on debt. In particular, they may be less likely than active participants to preserve their accounts for retirement when leaving a job.[39] To assess the implications of this possibility the Department produced alternative baseline and low-impact estimates, which assume that participants who leave their jobs while in default status never preserve their accounts. (Default participants who become active participants before leaving their jobs are assumed to preserve their accounts at the same rate as other active participants.) The alternative estimates represent a worst case outer bound. As noted above, comparing its primary baseline and low-impact estimates, the Department found that in 2033, 50 percent of net new job leavers with account balances preserve 83 percent of all net new job-leaver account balances. Comparing the respective alternative estimates, the Department found that the corresponding figures are 25 percent and 72 percent. Based on the Department's primary baseline and low-impact estimates, the regulation is expected to reduce the proportion of account holding job leavers that preserve their accounts from 61.0 percent to 60.4 percent and the proportion of their accounts that is preserved from 85.9 percent to 85.8 percent. Based on the alternative estimates, the corresponding reductions are from 56.9 percent to 54.7 percent and from 85.3 percent to 84.9 percent. Both the primary and alternative estimates strongly suggest that most new retirement saving resulting from this regulation (together with the automatic enrollment provisions of the Pension

[37] According to one survey, 24 percent of employers with automatic enrollment programs extended initial automatic enrollment beyond new hires to include the entire eligible population (Deloitte Consulting, Annual 401(k) Benchmarking Survey, 2005/2006 Edition (2006) at 8).

[38] According to one survey, 14 percent of plans with automatic enrollment provided for escalating default contributions in 2005, up from 7 percent in 2004 (Profit Sharing/401(k) Council of America, 49th Annual Survey of Profit Sharing and 401(k) Plans (2006) at 39). According to another, among the 24 percent of surveyed employers offering automatic enrollment in 2006, 17 percent planned to introduce escalating default contributions and 6 percent intended to increase the default contribution rate; none planned to lower it (Hewitt Associates LLC, Survey Findings: Hot Topics in Retirement, 2006 (2006) at 4).

[39] A number of factors may diminish this possibility. First, participants who contribute and invest by default may also tend to handle account distribution opportunities by default. Laws governing plans' default distribution provisions provide for the preservation of all but the smallest accounts. Absent participant direction to the contrary, accounts of $5,000 or more must remain in the plan, and smaller accounts of $1,000 or more must either remain in the plan or be rolled directly into an IRA. Second, some 401(k) plan sponsors reserve eligibility and automatic enrollment for employees who complete a specified period of service, such as one year. It is possible that sponsors with higher-turnover work forces and/or those offering automatic enrollment are or will be more likely to provide for such waiting periods for eligibility, perhaps in order to avoid the expense of churning very small accounts. Third, it is possible that the small fraction of employees who decline automatic enrollment (perhaps 10 percent) may be largely the same ones who would decline to preserve their accounts. In that case, participants added by automatic enrollment might be more likely to preserve them.

Protection Act) will be preserved for retirement. While one effect of the regulation will be to create many very small and short-lived accounts that participants never actively manage and may be unlikely to preserve, the Department expects that the larger effect will be to spur new, early default contributions by participants who later actively manage their accounts and are likely to preserve them.

The regulation may encourage active (in addition to default) investments in qualified default investment alternatives—a phenomenon sometimes referred to as an endorsement effect. If so, the impact of the regulation on asset allocation, and the attendant net positive effect on account balances and retirement income, will be amplified.[40]

Because the regulation's effects will be cumulative and gradual, they will be fully realized only in the very long run, generally when workers beginning careers today have long since retired. This long time horizon introduces additional, longer-term variables, but most of these implicate less the regulation's effects than the baseline. For example, future investment results may vary.[41] Other variables, which the Department did not attempt to quantify, include future career patterns and compensation levels and mixes.

Peer Review

OMB's ''Final Information Quality Bulletin for Peer Review'' (the Bulletin) establishes that important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government. Collectively, the PENSIM model, the data and methods underlying it, the surveys and literature used to parameterize it, and the Department's interpretation of these and application of them to estimate the effects of this regulation and the proposed regulation constitute a ''highly influential scientific assessment'' under the Bulletin. Pursuant to the Bulletin, the Department therefore subjected this assessment to peer review. All materials associated with that review, including the Department's full response to the peer review, are available to the public as part of the docket associated with this regulation.[42]

The analysis presented here has been refined in several ways in response to the peer review.

The review questioned whether default participants would cash out their accounts rather than preserve them for retirement. The Department's primary estimates assume that default accounts will be cashed out or preserved at the same rates as other similarly-sized accounts.[43] The results, as reported above, suggest that balances attributable to new default contributions will be nearly as likely as other balances to be preserved. It is possible, however, that default participants will be less likely to preserve their accounts than active participants with similar-sized accounts. The Department therefore prepared alternative estimates that account for this possibility. The results appear under the heading ''Sensitivity Testing'' above.

The review questioned whether lower-paid workers might be more risk averse and might therefore be susceptible to welfare losses if their default investments are redirected from capital preservation vehicles to qualified default investment alternatives. In response the Department more closely examined the regulation's impact on lower-paid workers, finding disproportionate gains in pension income, as described above. These gains may help offset any welfare losses due to sub-optimal risk exposure. In addition, the Department believes the required notice to participants regarding default investments will facilitate the ability of workers to easily choose to actively change their risk exposure if the qualified default investment alternatives do not meet their risk preferences.

The reviews questioned the Department's assumptions regarding investment returns, saying they exaggerated the equity premium, neglected fees, and neglected variation in inflation and returns to debt instruments. In response the Department has moderated its assumption regarding the equity premium,[44] accounted for fees, and incorporated stochastic variation in inflation and debt returns.

Alternatives Considered

Capital Preservation Products

In defining the types of investment products, portfolios or services that may be used as a long-term qualified default investment alternative, the Department, after careful consideration of the many comments supporting capital preservation products, and assessment of related economic impacts, determined not to include capital

[40] There is some evidence to suggest that qualified default investment alternatives, once established as plan defaults, may claim a disproportionate share of active investments as well. There is some evidence that participants may gravitate toward investment options that appear to be endorsed by their employers, such as by responding to employers' directing of matching contributions into company stock by investing more participant-directed funds in company stock as well (see, *e.g.*, Jeffrey R. Brown, Nellie Liang and Scott Weisbenner, Individual Account Investment Options and Portfolio Choice: Behavioral Lessons from 401(k) Plans, (Sept. 2006) at 18). This paper summarizes some prior evidence and provides some new evidence of this effect, but also raises the possibility that this effect may be attributable instead to other factors. Participants have been found to exhibit inertia in their investment choices, being slow to rebalance or to respond to changes in the investment options offered to them (see, *e.g.*, Olivia S. Mitchell, Gary R. Mottola, Stephen P. Utkus, and Takeshi Yamaguchi, The Inattentive Participant: Portfolio Trading Behavior in 401(k) Plans, Pension Research Council Working Paper 2006–5 (2006) at 16, which finds a lack of rebalancing; see also Jeffrey R. Brown and Scott Weisbenner, Individual Account Investment Options and Portfolio Choice: Behavioral Lessons from 401(k) Plans (Dec. 2004) at 23, 37, Tables 8a, 8b, which finds inertia in participant response to the addition of new funds). Most on point, some early experience with automatic enrollment programs suggests that a previously available investment alternative, once established as a default in an automatic enrollment program, may attract an increased proportion of actively directed participant accounts (see, e.g, John Beshears, James J. Choi, David Laibson and Brigitte C. Madrian, The Importance of Default Options for Retirement Savings Outcomes: Evidence from the United States, National Bureau of Economic Research Working Paper 12009 (Jan. 2006), which provides some evidence of such an endorsement effect; see also Fidelity Investments, Building Futures Volume VII: How Workplace Savings are Shaping the Future of Retirement, (2006) at 124–138, for data on the concentration of participant accounts in default investment alternatives). To assess the potential implications of an endorsement effect for the impact of this regulation, the Department carried out a sensitivity test of its low-impact estimates of the regulation's effects. Where the Department's primary estimates take into account the default investment of defaulted participants' accounts only (no endorsement effect), the sensitivity test additionally assumes that 20 percent of actively directed accounts in plans with automatic enrollment will be directed to default investment alternatives (20 percent endorsement effect). Compared with the primary estimates, the sensitivity test indicates that regulation will increase aggregate account balances in 2034, expressed in 2006 dollars, by $87 billion (rather than $70 billion), of which $26 billion (rather than $5 billion) will be directly attributable to the allocation of more assets to qualified default investment alternatives (the rest will be attributable to growth in automatic enrollment).

[41] The Department's estimates illustrate some of this as variation in results across individuals.

[42] Please see *http://www.dol.gov/ebsa/regs/peerreview.html.*

[43] The Department's estimate of the effect of the proposed regulation assigned uniform cash out probabilities (derived from an industry survey) to accounts within certain arbitrary size categories. For example, all accounts smaller than approximately $11,000 (expressed at 2005 levels) were assigned the same cash out probability. This may have understated the propensity to cash out very small accounts. The Department has since refined its estimation of cash out probabilities. These probabilities are now estimated as a continuous function of account size, based on household survey data.

[44] In its estimates of the effects of the proposed regulation the Department had assumed a real average equity return of 6.5 percent, which was consistent with long-term historical performance. The estimates presented here assume a real average return of 4.9 percent, which is more in line with recent performance and commenters' expectations of the future.

preservation products, such as money market or stable value funds, as a stand-alone long-term investment option for contributions made after the effective date of this regulation. However, the Department believes that such investments can play an important role as a component of a qualified default investment alternative. Further, it is important to note that the exclusion of such funds as a qualified default investment alternative does not preclude their use as a default investment option—fiduciaries are free to adopt default investments they deem to be prudent without availing themselves of the fiduciary relief afforded by this regulation.

Including such instruments for future contributions might have yielded some benefits if, for example, their inclusion would encourage more plan sponsors to implement automatic enrollment programs or fewer workers to opt out of them. The Department believes such cases would be rare, however. First, a decreasing proportion of plans already are designating such instruments as default investments.[45] Second, workers concerned that a default investment provides more risk than they prefer need not refuse or terminate[46] participation in response, but instead need only direct their contributions into a different investment option otherwise available in the plan.

Including such instruments might benefit some affected short-tenure participants who cash out and spend their accounts during downturns in equity prices. Historically, though, equity returns are positive more often then they are negative, so this potential benefit is likely to be outweighed by the opportunity cost to affected short-tenure participants who cash out during upturns.[47] Moreover, the Department believes that this regulation should be calibrated to foster preservation of retirement accounts rather than to accommodate cashouts, consistent with other provisions of law, such as the mandatory withholding and additional tax provisions applicable to premature distributions.

Some comments on the proposed regulation expressed concern that qualified default investment alternatives would expose risk averse participants to excessive investment risk, and on that basis urged the Department to include stand-alone capital preservation instruments as qualified default investment alternatives. The Department is not persuaded by this argument, however, for three reasons. First, the regulation's primary goal is to promote default investments that enhance retirement saving, not to align default investments with individuals' levels of risk tolerance.[48] Second, the Department nonetheless believes that the qualified default investment alternatives included in the regulation can satisfy most affected individuals' risk preferences.[49] Finally, participants who find default investments too risky can opt out of them without opting out of plan participation entirely.

Some comments cautioned that the exclusion of stand-alone capital preservation products from the definition of qualified default investment alternatives would prompt a large, rapid movement of money across asset classes, with negative consequences for financial markets. In particular according to these comments, movement out of stable value products might repress those products' future interest crediting rates and thereby harm investors who continue to hold them. The Department believes, however, that movement away from stable value products and therefore any negative impact on forward crediting rates will be modest, as only a relatively small portion of current assets in stable value products appears to be attributable to defaulted participants.[50] Additionally,

[45] According to one survey, in 2006, 17 percent of sponsors with automatic enrollment programs were likely to change their default from such instruments to qualified default investment alternative-type instruments, while just 4 percent were likely to do the opposite (Hewitt Associates LLC, Survey Findings: Hot Topics in Retirement 2006 (2006) at 4). According to another, between 1999 and 2005 the proportion designating such instruments as defaults decreased from 69 percent to 56 percent, while the proportion designating qualified default investment alternative-type instruments as defaults increased from 28 percent to 39 percent (Hewitt Associates LLC, Survey Findings: Trends and Experiences in 401(k) Plans 2005, (2005) at 15).

[46] Might a risk-averse participant, enrolled and invested by default, terminate participation in response to news that their account had suffered principal losses? Perhaps not. The same inertia that leads some participants to enroll and invest by default might also prevent them from terminating participation. The Department also observes that an early principal loss usually will not translate into a decline in the account balance reported in a quarterly statement, since quarterly contributions are likely to more than offset such losses during at least the first few years of participation.

[47] Such potential benefits would additionally be offset by reduced average returns to default investors who do not cash out early. As noted above, the Department estimates that most default contributions will be preserved for retirement. As discussed above, even the subset of short term workers who cash out their accounts will experience an overall aggregate increase in wealth from this regulation. Thus, the concern for fostering preservation of retirement accounts is not being weighed against aggregate losses to this subset of workers, but is instead being weighed against the added volatility their accounts might experience. In weighing these interests, the Department kept in mind that short term employees concerned about this volatility are always free to choose a different investment option.

[48] In theory individuals can optimize their investment mix over time to match their personal taste for risk and return. The regulation's provisions that establish participants' right to direct their investments out of qualified default alternatives give participants the opportunity to so do. But in practice investors sometimes do not optimize their investment alternatives. Some may lack clear, fixed and rational preferences for risk and return. Some investors' tastes for risky assets may be distorted by imperfect information, or by irrational and ineffectual behavioral phenomena such as naive diversification (a tendency to divide assets equally across available options), sub-optimal excessive concentration in company stock, market timing, mental accounting and framing, and reliance on peer examples (see, *e.g.*, Richard H. Thaler and Shlomo Benartzi, The Behavioral Economics of Retirement Savings Behavior, AARP Public Policy Institute white paper #2007–02 (Jan. 2007) at 6–16), or inertia. This regulation promotes default investments that can enhance such investors' retirement savings prospects.

[49] One commenter on the proposed regulation called the Department's attention to a study of optimal investment mixes for investors with different levels of risk aversion. The study employed techniques known as stochastic dominance analysis of asset class performance and multi-period investor utility optimization, explaining that these techniques are in some ways superior to alternatives such as mean-variance analysis of asset class performance and single-period utility optimization. The commenter criticized the Department's use of the latter, potentially inferior techniques to assess the question of what mix of asset classes best matches investors' tastes. But in fact the Department did not assess this question, focusing instead on how different asset class mixes affect retirement savings accumulations. Interestingly the study, which utilized stable value product performance data supplied by the industry, concluded that for most investors most of the time, the optimal portfolio will include a mix of equity and stable value products rather than stable value products alone. This suggests to the Department that the qualified default investment alternatives included in this regulation encompass most investors' levels of risk tolerance. The Department also notes that most 401(k) plan participants who actively direct their investments include equity in their portfolios (see, *e.g.*, Sarah Holden and Jack VanDerhei, 401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2005, EBRI Issue Brief No. 296 (Aug. 2006) at 9, Figure 8; see also Fidelity Investments, Building Futures Volume VII: How Workplace Savings are Shaping the Future of Retirement (2006) at 128, Figure 130).

[50] There are several reasons to believe that asset allocation will not shift very abruptly, and that stable value products will continue to claim a large share of 401(k) plan assets. First, while this regulation generally does not extend fiduciary relief to default investments that consist solely of stable value products, it does not foreclose qualified default investment alternatives from including such products, and leaves intact general fiduciary provisions that may otherwise permit default investments that consist solely of such products. A significant number of plans currently utilize stable value products as their default investment option, reflecting determinations by a significant number of plan fiduciaries that stand-alone stable value products are a prudent investment for defaulted participants. Nothing in this regulation is intended to suggest or require that a plan fiduciary change an otherwise prudent selection of a stable value product for a plan's default investment option. The Department therefore anticipates that some plans will continue to direct all or a portion of default investments to stable value products. Second, the

according to these comments, movement out of stable value products might alter short-term conditions in the markets for debt securities that underlie such products. Decreased demand for stable value products might then repress the price of underlying debt instruments and increased demand for qualified default investment alternatives might drive up equity prices. The Department believes any such effects would be gradual and negligible.[51]

If included as a qualified default investment alternative and thereby promoted as a default investment, stand-alone capital preservation products' generally inferior long-term investment returns would almost certainly erode the regulation's beneficial effect on retirement income. The Department estimates that including capital preservation instruments as a stand-alone qualified default investment alternative would reduce aggregate account balances in 2034 by between $5 billion and $7 billion (expressed in 2006 dollars).[52] This negative effect will be larger if there is an endorsement effect ($26 billion under the low-impact estimate)—that is, if the instruments status as a qualified default investment alternative encourages active (in addition to default) investments in them.[53]

Finally, the Department believes it is desirable for a default investment vehicle to be diversified across asset classes, rather than to include only a single asset class. Such diversification can improve a portfolio's risk and return efficiency.

In summary, in weighing the merits of potential qualified default investment alternatives, the Department sought primarily to promote default investments that enhance retirement savings. The Department considered market trends, generally accepted investment theories, mainstream financial planning practices, and actual investor behavior, as well as the estimated effect of qualified default investment alternatives on retirement savings. All of these criteria suggest that it is desirable to invest retirement savings in vehicles that provide for the possibility of capital appreciation in addition to capital preservation.

Accordingly, the Department did not include stand-alone capital preservation instruments among the qualified default investment alternatives under the regulation. However, the Department has modified the regulation to include a ''grandfather''-like provision pursuant to which stable value products and funds will constitute a qualified default investment alternative under the regulation for purposes of investments made prior to the effective date of the regulation.

Balanced Defaults

The Department also considered whether to include as a qualified default investment alternative an investment fund product or model portfolio that establishes a uniform mix of equity and fixed income exposures for all affected participants. Such a product or model portfolio must be appropriate for participants of the plan as a whole but cannot be separately calibrated for each participant or for particular classes of participants. Therefore, while its risk level may be appropriate for all affected participants it is unlikely to be optimal for all. However, such a product or model portfolio may also have relative advantages. Compared with the other potential qualified default investment alternatives such a product or portfolio may be simpler, less expensive and easier to explain and understand. These advantages sometimes may outweigh the potential advantage of more customized risk levels. And the inclusion of such products or model portfolios might help heighten competition in the market and thereby enhance product quality and affordability across all qualified default investment alternatives. Accordingly, the Department has included such instruments as qualified default investment alternatives under this regulation.

Federalism Statement

Executive Order 13132 (August 4, 1998) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the formulation and implementation of policies that have a substantial direct effect on the States, the relationship between the national government and the States, or on the distributive power and responsibilities among the various levels of government. As noted above, section 902(f) of the Pension Protection Act adds a new provision to ERISA (section 514(e)) providing that notwithstanding any other provision of section 514, Title I of ERISA supersedes State laws that would directly or indirectly prohibit or restrict the inclusion of an automatic contribution arrangement in any plan. In the preamble to the notice of proposed rulemaking published on September 27, 2006, the Department specifically discussed the preemption provision enacted in the Pension Protection Act and requested comments on whether, and to what extent, addressing this provision in the regulations would be helpful. Although no States provided comments on the proposed regulation, other commenters requested that the Department use the regulation to clarify the application of the statutory preemption provision. As noted elsewhere in this preamble, paragraph (f) of the final regulation addresses those comments. In accordance with section 4 of the E.O. 13132, the Department of Labor has construed the preemptive effect of ERISA section 514(e) at the minimum level necessary to achieve the objectives of the statute.

Department expects that stable value products will continue to be offered as an investment option by many participant-directed plans and selected by many participants. It is expected that participants will invest only a small fraction of assets by default, and will actively direct a large majority of assets. The Department's low- and high-impact estimates respectively suggest that between 1.2 percent and 1.5 percent of 401(k) plan assets will be invested by default in 2034. Viewed another way, absent this regulation, the Department estimates that just $10 billion would be invested by default in capital preservation vehicles in 2034 (expressed in 2006 dollars). This compares with approximately $400 billion of 401(k) assets invested in stable value products today. Third, there will be some offsetting effect, deriving from the increase in actively invested account balances expected to result from this regulation. The Department estimates that the regulation, by promoting automatic enrollment and higher average investment performance, will increase aggregate actively invested account balances in 2034 by between $59 billion and $114 billion (expressed in 2006 dollars), or between 2.4 percent and 4.6 percent, while aggregate default invested account balances will grow by just $11 billion to $20 billion. Stable value products will capture some share of the increase in actively invested account balances. Fourth, the extent to which some plans do move money out of stable value products may be additionally moderated by stable value product features that have the effect of discouraging large movements and by associated fiduciary considerations. Plan fiduciaries, in determining whether, how and under what circumstances a change should be made in the plan's default investment option, must assess, among other things, the potential economic consequences of such a change to participants' investments in such options. Finally, because this regulation includes a ''grandfather''-like provision applicable to certain stable value products, it provides no direct incentive for plan fiduciaries to reallocate account balances heretofore invested by default in such products.

[51] As noted above, the Department expects that asset allocation will not shift very abruptly, and that stable value products will continue to claim a large share of 401(k) assets. In addition, while stable value products comprise a substantial fraction of all 401(k) assets (perhaps as much as 20 percent), their underlying portfolios hold only a small fraction (generally between 0.5 percent and 2 percent) of all debt and of major debt categories such as mortgages, corporate bonds and treasury and agency issues. These estimates are based on stable value product data provided by the Stable Value Industry Association and the U.S. Federal Reserve Board of Governors' Flow of Funds Accounts.

[52] This assumes that, as under the baseline, 50 percent of default contributions will be directed to capital preservation products and 50 percent to (other) qualified default investment alternatives.

[53] For this calculation, the Department assumes a 20 percent endorsement effect.

In any event, the Department does not view the final rule, as distinct from the statute, as having a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power among the various levels of government. The statute preempts State laws and the regulation merely clarifies application of the statutory provision in a way that is consistent with the plain language and the legislative history. State wage withholding restrictions will not be affected except as they apply to automatic contribution arrangements of ERISA-covered plans. Moreover, the regulation imposes no compliance costs on State or local governments. As a result, the Department concludes that the final regulation does not have federalism implications.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

■ For the reasons set forth in the preamble, the Department amends Subchapter F, Part 2550 of Title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; sec. 657, Pub. L. 107–16, 115 Stat. 38; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Add § 2550.404c–5 to read as follows:

§ 2550.404c–5 Fiduciary relief for investments in qualified default investment alternatives.

(a) *In general.* (1) This section implements the fiduciary relief provided under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), 29 U.S.C. 1001 et seq., under which a participant or beneficiary in an individual account plan will be treated as exercising control over the assets in his or her account for purposes of ERISA section 404(c)(1) with respect to the amount of contributions and earnings that, in the absence of an investment election by the participant, are invested by the plan in accordance with this regulation. If a participant or beneficiary is treated as exercising control over the assets in his or her account in accordance with ERISA section 404(c)(1) no person who is otherwise a fiduciary shall be liable under part 4 of title I of ERISA for any loss or by reason of any breach which results from such participant's or beneficiary's exercise of control. Except as specifically provided in paragraph (c)(6) of this section, a plan need not meet the requirements for an ERISA section 404(c) plan under 29 CFR 2550.404c–1 in order for a plan fiduciary to obtain the relief under this section.

(2) The standards set forth in this section apply solely for purposes of determining whether a fiduciary meets the requirements of this regulation. Such standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to the investment of assets in the individual account of a participant or beneficiary.

(b) *Fiduciary relief.* (1) Except as provided in paragraphs (b)(2), (3), and (4) of this section, a fiduciary of an individual account plan that permits participants or beneficiaries to direct the investment of assets in their accounts and that meets the conditions of paragraph (c) of this section shall not be liable for any loss, or by reason of any breach under part 4 of title I of ERISA, that is the direct and necessary result of (i) investing all or part of a participant's or beneficiary's account in any qualified default investment alternative within the meaning of paragraph (e) of this section, or (ii) investment decisions made by the entity described in paragraph (e)(3) of this section in connection with the management of a qualified default investment alternative.

(2) Nothing in this section shall relieve a fiduciary from his or her duties under part 4 of title I of ERISA to prudently select and monitor any qualified default investment alternative under the plan or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses.

(3) Nothing in this section shall relieve any fiduciary described in paragraph (e)(3)(i) of this section from its fiduciary duties under part 4 of title I of ERISA or from any liability that results from a failure to satisfy these duties, including liability for any resulting losses.

(4) Nothing in this section shall provide relief from the prohibited transaction provisions of section 406 of ERISA, or from any liability that results from a violation of those provisions, including liability for any resulting losses.

(c) *Conditions.* With respect to the investment of assets in the individual account of a participant or beneficiary, a fiduciary shall qualify for the relief described in paragraph (b)(1) of this section if:

(1) Assets are invested in a qualified default investment alternative within the meaning of paragraph (e) of this section;

(2) The participant or beneficiary on whose behalf the investment is made had the opportunity to direct the investment of the assets in his or her account but did not direct the investment of the assets;

(3) The participant or beneficiary on whose behalf an investment in a qualified default investment alternative may be made is furnished a notice that meets the requirements of paragraph (d) of this section:

(i) (A) At least 30 days in advance of the date of plan eligibility, or at least 30 days in advance of the date of any first investment in a qualified default investment alternative on behalf of a participant or beneficiary described in paragraph (c)(2) of this section; or

(B) On or before the date of plan eligibility provided the participant has the opportunity to make a permissible withdrawal (as determined under section 414(w) of the Internal Revenue Code of 1986, as amended (Code)); and

(ii) Within a reasonable period of time of at least 30 days in advance of each subsequent plan year;

(4) A fiduciary provides to a participant or beneficiary the material set forth in 29 CFR 2550.404c-1(b)(2)(i)(B)(1)(viii) and (ix) and 29 CFR 404c-1(b)(2)(i)(B)(2) relating to a participant's or beneficiary's investment in a qualified default investment alternative;

(5)(i) Any participant or beneficiary on whose behalf assets are invested in

a qualified default investment alternative may transfer, in whole or in part, such assets to any other investment alternative available under the plan with a frequency consistent with that afforded to a participant or beneficiary who elected to invest in the qualified default investment alternative, but not less frequently than once within any three month period;

(ii)(A) Except as provided in paragraph (c)(5)(ii)(B) of this section, any transfer described in paragraph (c)(5)(i), or any permissible withdrawal as determined under section 414(w)(2) of the Code, by a participant or beneficiary of assets invested in a qualified default investment alternative, in whole or in part, resulting from the participant's or beneficiary's election to make such a transfer or withdrawal during the 90-day period beginning on the date of the participant's first elective contribution as determined under section 414(w)(2)(B) of the Code, or other first investment in a qualified default investment alternative on behalf of a participant or beneficiary described in paragraph (c)(2) of this section, shall not be subject to any restrictions, fees or expenses (including surrender charges, liquidation or exchange fees, redemption fees and similar expenses charged in connection with the liquidation of, or transfer from, the investment);

(B) Paragraph (c)(5)(ii)(A) of this section shall not apply to fees and expenses that are charged on an ongoing basis for the operation of the investment itself (such as investment management fees, distribution and/or service fees, ''12b–1'' fees, or legal, accounting, transfer agent and similar administrative expenses), and are not imposed, or do not vary, based on a participant's or beneficiary's decision to withdraw, sell or transfer assets out of the qualified default investment alternative; and

(iii) Following the end of the 90-day period described in paragraph (c)(5)(ii)(A) of this section, any transfer or permissible withdrawal described in this paragraph (c)(5) of this section shall not be subject to any restrictions, fees or expenses not otherwise applicable to a participant or beneficiary who elected to invest in that qualified default investment alternative; and

(6) The plan offers a ''broad range of investment alternatives'' within the meaning of 29 CFR 2550.404c–1(b)(3).

(d) *Notice.* The notice required by paragraph (c)(3) of this section shall be written in a manner calculated to be understood by the average plan participant and shall contain the following:

(1) A description of the circumstances under which assets in the individual account of a participant or beneficiary may be invested on behalf of the participant or beneficiary in a qualified default investment alternative; and, if applicable, an explanation of the circumstances under which elective contributions will be made on behalf of a participant, the percentage of such contributions, and the right of the participant to elect not to have such contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage);

(2) An explanation of the right of participants and beneficiaries to direct the investment of assets in their individual accounts;

(3) A description of the qualified default investment alternative, including a description of the investment objectives, risk and return characteristics (if applicable), and fees and expenses attendant to the investment alternative;

(4) A description of the right of the participants and beneficiaries on whose behalf assets are invested in a qualified default investment alternative to direct the investment of those assets to any other investment alternative under the plan, including a description of any applicable restrictions, fees or expenses in connection with such transfer; and

(5) An explanation of where the participants and beneficiaries can obtain investment information concerning the other investment alternatives available under the plan.

(e) *Qualified default investment alternative.* For purposes of this section, a qualified default investment alternative means an investment alternative available to participants and beneficiaries that:

(1)(i) Does not hold or permit the acquisition of employer securities, except as provided in paragraph (ii).

(ii) Paragraph (e)(1)(i) of this section shall not apply to: (A) Employer securities held or acquired by an investment company registered under the Investment Company Act of 1940 or a similar pooled investment vehicle regulated and subject to periodic examination by a State or Federal agency and with respect to which investment in such securities is made in accordance with the stated investment objectives of the investment vehicle and independent of the plan sponsor or an affiliate thereof; or (B) with respect to a qualified default investment alternative described in paragraph (e)(4)(iii) of this section, employer securities acquired as a matching contribution from the employer/plan sponsor, or employer securities acquired prior to management by the investment management service to the extent the investment management service has discretionary authority over the disposition of such employer securities;

(2) Satisfies the requirements of paragraph (c)(5) of this section regarding the ability of a participant or beneficiary to transfer, in whole or in part, his or her investment from the qualified default investment alternative to any other investment alternative available under the plan;

(3) Is:

(i) Managed by: (A) an investment manager, within the meaning of section 3(38) of the Act; (B) a trustee of the plan that meets the requirements of section 3(38)(A), (B) and (C) of the Act; or (C) the plan sponsor who is a named fiduciary, within the meaning of section 402(a)(2) of the Act;

(ii) An investment company registered under the Investment Company Act of 1940; or

(iii) An investment product or fund described in paragraph (e)(4)(iv) or (v) of this section; and

(4) Constitutes one of the following:

(i) An investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses and that is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such products and portfolios change their asset allocations and associated risk levels over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. For purposes of this paragraph (e)(4)(i), asset allocation decisions for such products and portfolios are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a fund or portfolio may be a ''life-cycle'' or ''targeted-retirement-date'' fund or account.

(ii) An investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses and that is designed to provide long-term appreciation and capital preservation through a mix of equity and fixed income exposures consistent with a target level of risk appropriate for participants of the plan as a whole. For purposes of this paragraph (e)(4)(ii), asset allocation

decisions for such products and portfolios are not required to take into account the age, risk tolerances, investments or other preferences of an individual participant. An example of such a fund or portfolio may be a ''balanced'' fund.

(iii) An investment management service with respect to which a fiduciary, within the meaning of paragraph (e)(3)(i) of this section, applying generally accepted investment theories, allocates the assets of a participant's individual account to achieve varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures, offered through investment alternatives available under the plan, based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such portfolios are diversified so as to minimize the risk of large losses and change their asset allocations and associated risk levels for an individual account over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. For purposes of this paragraph (e)(4)(iii), asset allocation decisions are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a service may be a ''managed account.''

(iv)(A) Subject to paragraph (e)(4)(iv)(B) of this section, an investment product or fund designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. Such investment product shall for purposes of this paragraph (e)(4)(iv):

(*1*) Seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product; and

(*2*) Be offered by a State or federally regulated financial institution.

(B) An investment product described in this paragraph (e)(4)(iv) shall constitute a qualified default investment alternative for purposes of paragraph (e) of this section for not more than 120 days after the date of the participant's first elective contribution (as determined under section 414(w)(2)(B) of the Code).

(v)(A) Subject to paragraph (e)(4)(v)(B) of this section, an investment product or fund designed to guarantee principal and a rate of return generally consistent with that earned on intermediate investment grade bonds, while providing liquidity for withdrawals by participants and beneficiaries, including transfers to other investment alternatives. Such investment product or fund shall, for purposes of this paragraph (e)(4)(v), meet the following requirements:

(*1*) There are no fees or surrender charges imposed in connection with withdrawals initiated by a participant or beneficiary; and

(*2*) Principal and rates of return are guaranteed by a State or federally regulated financial institution.

(B) An investment product or fund described in this paragraph (e)(4)(v) shall constitute a qualified default investment alternative for purposes of paragraph (e) of this section solely for purposes of assets invested in such product or fund before December 24, 2007.

(vi) An investment fund product or model portfolio that otherwise meets the requirements of this section shall not fail to constitute a product or portfolio for purposes of paragraph (e)(4)(i) or (ii) of this section solely because the product or portfolio is offered through variable annuity or similar contracts or through common or collective trust funds or pooled investment funds and without regard to whether such contracts or funds provide annuity purchase rights, investment guarantees, death benefit guarantees or other features ancillary to the investment fund product or model portfolio.

(f) *Preemption of State laws.* (1) Section 514(e)(1) of the Act provides that title I of the Act supersedes any State law that would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. For purposes of section 514(e) of the Act and this paragraph (f), an automatic contribution arrangement is an arrangement (or the provisions of a plan) under which:

(i) A participant may elect to have the plan sponsor make payments as contributions under the plan on his or her behalf or receive such payments directly in cash;

(ii) A participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage); and

(iii) Contributions are invested in accordance with paragraphs (a) through (e) of this section.

(2) A State law that would directly or indirectly prohibit or restrict the inclusion in any pension plan of an automatic contribution arrangement is superseded as to any pension plan, regardless of whether such plan includes an automatic contribution arrangement as defined in paragraph (f)(1) of this section.

(3) The administrator of an automatic contribution arrangement within the meaning of paragraph (f)(1) of this section shall be considered to have satisfied the notice requirements of section 514(e)(3) of the Act if notices are furnished in accordance with paragraphs (c)(3) and (d) of this section.

(4) Nothing in this paragraph (f) precludes a pension plan from including an automatic contribution arrangement that does not meet the conditions of paragraphs (a) through (e) of this section.

Signed at Washington, DC, this 15th day of October, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 07–5147 Filed 10–23–07; 8:45 am]

BILLING CODE 4510–29–P

Federal Register

Wednesday,
October 24, 2007

Part IV

Department of the Interior

National Indian Gaming Commission

25 CFR Parts 502, 542, 543, et al.
Indian Gaming Regulatory Act: Definitions and Classification Standards; Proposed Rules

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 502

RIN 3141–AA31

Definition for Electronic or Electromechanical Facsimile

AGENCY: National Indian Gaming Commission (''NIGC'' or ''Commission'').

ACTION: Proposed rule.

SUMMARY: The proposed rule revises the definition of a term Congress used to define Class II gaming. Specifically, the proposed rule revises the definition for ''electronic or electromechanical facsimile'' that appears in the Commission's regulations. The Commission defined these terms in 1992 and revised the definitions in 2002. The proposed rule offers further revision.

DATES: Submit comments on or before December 10, 2007.

ADDRESSES: Mail comments to ''Comments on Electronic or Electromechanical Facsimile Definition,'' National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005, Attn: Penny Coleman, Acting General Counsel. Comments may be transmitted by facsimile to 202–632–0045, or mailed or submitted to the above address. Comments may also be submitted electronically to *facsimile_definition@nigc.gov*.

FOR FURTHER INFORMATION CONTACT: Penny Coleman or John Hay, Office of General Counsel, Telephone 202–632–7003. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (''IGRA''), 25 U.S.C. 2701–21, enacted by the Congress in 1988, establishes the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

''Class I gaming'' means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively. 25 U.S.C. 2710(a)(1).

''Class II gaming'' means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games so long as they are not house banking games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming, however, are banking card games such as blackjack and electronic or electromechanical facsimiles of any game of chance or slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. 25 U.S.C. 2710(a)(2). Indian tribes can engage in such gaming without any state involvement.

''Class III gaming'' includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including most forms of casino-type gaming such as slot machines of any kind, electronic or electromechanical facsimiles of any game of chance, roulette, banking card games such as blackjack, and pari-mutuel wagering. Class III gaming may be conducted lawfully only if the state in which the tribe is located and the tribe reach an agreement called a tribal-state compact. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior if the tribe and the state have not reached agreement or if the state has refused to negotiate in good faith toward an agreement. The tribal-state compact or Secretarial procedures may contain provisions for concurrent state and tribal regulation of Class III gaming. In addition, the United States Department of Justice possesses exclusive criminal jurisdiction over Class III gaming on Indian lands and also possesses certain civil jurisdiction over such gaming.

As a legal matter, Congress defined the parameters for game classification when it enacted IGRA. As a practical matter, however, the congressional definitions were general in nature and specific terms within the broad gaming classifications were not explicitly defined. The Commission adopted regulations in 1992 that included definitions for many terms used in the statutory classification scheme, including ''electronic or electromechanical facsimile,'' 25 CFR 502.7, and ''electronic computer or other technologic aid,'' 25 CFR 502.8. The Commission revised the definitions in 2002. See 67 FR 41166 (Jun. 17, 2002) for an extensive discussion of the reasons for the Commission's decision to revise these key terms.

A recurring question as to the proper scope of Class II gaming involves the use of electronics and other technology in conjunction with bingo and lotto as well as pull tabs, instant bingo, and other games similar to bingo that may be Class II if played in a location where Class II bingo is played. In IGRA, Congress recognized the right of tribes to use ''electronic, computer or other technologic aids'' in connection with these forms of Class II gaming. Congress provided, however, that ''electronic or electromechanical facsimiles of any game of chance or slot machines of any kind'' constitute Class III gaming. Because a tribe wishing to conduct Class III gaming may do so only in accordance with an approved tribal-state compact, it is important to distinguish the two classes.

As the Commission worked through a process to develop classification standards, it became apparent that the revised definitions issued by a divided Commission in June 2002, See 67 FR 41166 (Jun. 17, 2002), did not provide the clarity that had been a goal in that rulemaking. Accordingly, the Commission proposes to revise the definition of the term ''electronic or electromechanical facsimile.''

Purpose and Scope

The definition for ''electronic or electromechanical facsimile'' has been misconstrued by some as allowing for bingo facsimiles. The Commission is convinced that there needs to be a distinction with a difference between Class II and Class III gaming. Under IGRA, a facsimile is Class III. Courts have taken a plain meaning approach to defining facsimile finding that facsimiles are exact copies or duplicates. *Sycuan Band of Mission Indians* v. *Roach*, 54 F.3d 535 (9th Cir. 1995); *U.S.* v. *162 Megamania Gambling Devices*, 231 F.3d 713, 724 (10th Cir. 2000). It has also been recognized that facsimiles of Class II games would be considered a Class III game under IGRA. *Diamond Game* v. *Reno*, 230 F.3d 365, 366 (D.C. Cir 2000). It has likewise been affirmed that facsimiles of games of chance including bingo would be violations of IGRA. *U.S.* v. *103 Electronic Gambling Devices*, 223 F.3d 1091, 1102 (9th Cir. 2000). Finally, it has been determined that even if a player is playing against another player and not simply the machine that the game may nonetheless be a facsimile. *Sycuan Band*, 54 F.3d at 542–43 (concluding that an electronic pull-tab game in which one player played with a machine, though not against it, was a class III electronic facsimile thereof). The proposed change to the definition for the term ''electronic or electromechanical facsimile'' will

clarify that facsimiles of bingo are not permissible Class II games under IGRA.

Changes to the Definition of ''Electronic or Electromechanical Facsimile'' in Part 502

a. ''Electronic or electromechanical facsimile''

The Commission proposes to revise the definition for ''electronic or electromechanical facsimile'' contained in § 502.8. Some have misinterpreted the 2002 revision and argued that facsimiles of bingo were properly classified as Class II. The revision makes clear that all games including bingo, lotto and ''other games similar to bingo,'' when played in an electronic medium, are facsimiles when they incorporate all of the fundamental characteristics of the game. In making this change, the Commission also wishes to emphasize that even bingo, lotto, and ''other games similar to bingo'' are ''electronic or electromechanical facsimiles'' of a game of chance when the format for the game either has players playing against a machine rather than broadening participation among multiple players, or fully incorporates all of the fundamental characteristics of these games electronically and requires no competitive action or decision making.

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is therefore not subject to review by the Office of Management and Budget.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

List of Subjects in 25 CFR Part 502

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, the Commission proposes to amend its regulations in 25 CFR part 502 as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2071, *et seq.*

2. Revise § 502.8 to read as follows:

§ 502.8 Electronic or electromechanical facsimile.

(a) Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all the fundamental characteristics of the game.

(b) Bingo, lotto, other games similar to bingo, pull-tabs, and instant bingo games that comply with part 546 of this chapter are not electronic or electromechanical facsimiles of any games of chance.

Dated: October 17, 2007.

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Commissioner.

Cloyce V. Choney,

Commissioner.

[FR Doc. E7–20781 Filed 10–23–07; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502 and 546

RIN 3141–AA31

Classification Standards for Bingo, Lotto, Other Games Similar to Bingo, Pull Tabs and Instant Bingo as Class II Gaming When Played Through an Electronic Medium Using ''Electronic, Computer, or Other Technologic Aids''

AGENCY: National Indian Gaming Commission (''NIGC'' or ''Commission'').

ACTION: Proposed rule.

SUMMARY: The proposed rule clarifies the terms Congress used to define Class II gaming. First, the proposed rule further revises the definitions for ''electronic or electromechanical facsimile'' and ''other games similar to bingo.'' The Commission defined these terms in 1992, revised the definitions in 2002, and proposed further revisions to the term ''electronic or electromechanical facsimile'' separate from this proposed revision. The Commission adds a new Part to its regulations that explains the basis for determining whether a game of bingo or lotto, ''other game similar to bingo,'' or a game of pull-tabs or ''instant bingo,'' meets the IGRA statutory requirements for Class II gaming, when such games are played electronically, primarily through an ''electronic, computer or other technologic aid,'' while distinguishing them from Class III ''electronic or electromechanical facsimiles.'' This new part also establishes a process for assuring that such games are Class II before placement of the games in a Class II tribal gaming operation. This process contains information collection requirements. The Commission has submitted the information collection request to OMB for approval.

DATES: Submit comments on or before December 10, 2007.

ADDRESSES: Mail comments to ''Comments on Class II Classification Standards'' National Indian Gaming

Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005, Attn: Penny Coleman, Acting General Counsel. Comments may be transmitted by facsimile to 202–632–7066, or mailed or submitted to the above address. Comments may also be submitted electronically to *classification_standards@nigc.gov*.

FOR FURTHER INFORMATION CONTACT: Penny Coleman or John Hay, Office of General Counsel, Telephone 202–632–7003. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Introduction
II. Background
III. Development
IV. New Proposal
V. Changes

I. Introduction

In writing and proposing this rule, the Commission has attempted to be mindful of the language of IGRA, Congress's intent, IGRA's legislative history, relevant court cases, and the essential need of the tribes for a broad, flexible and legally sustainable scope of Class II gaming. Class II was the basis on which Indian gaming was built. Since the enactment of IGRA in 1988, Indian gaming has grown into a $26 billion business, perhaps far eclipsing any limits which Congress may have envisioned. Although an estimated 90% of this gross gaming revenue is generated by compacted Class III gaming, Class II remains significant to tribes throughout the country.

For some tribes with Class III gaming compacts, Class II is a vital supplement, long patronized and preferred by some clientele. In other cases, sadly, some states fail and refuse to compact with their tribes for Class III play, notwithstanding their legal sanction of Class III gaming activities elsewhere within those states or their tolerance of widespread unsanctioned Class III activities. Tribes in that situation are left to make the most of Class II gaming and have operations that are, or were, places where the distinction between Class II and Class III has become the most blurred and where clarity is most needed. Further, as tribes negotiate with states for Class III compacts, they and the states need to know that there are viable Class II games that tribes may utilize if no agreement is reached.

As observed below, the statutory language of IGRA lacks clarity when it makes ''computer and electronic and technologic aids'' Class II but places ''electronic facsimiles of games of chance'' in Class III. However, some of the Act's legislative history sheds light upon Congress's intended goal.

In the House and Senate floor debates on IGRA, several proponents of the legislation described the distinction as that between ''bingo'' (Class II) and ''casino gaming'' (Class III). *See* 134 Cong. Rec. H8157. While ''casino gaming'' likewise lacks a crystal-clear definition, those who spoke associated the term with gambling halls filled with slot machines, venues separate and distinct from the bingo halls of the 1980's.

It further appears from the debates that a basis for making this the dividing line between Class II and Class III was the complexity and regulatory difficulties associated with slot machines and casino gaming. *See* 134 Cong. Rec. H8157, 134 Cong. Rec. S12643. Some argued that only states—then the only governments experienced with the conduct and regulation of such activity—were up to the task of regulating casino gaming, and thus casino gaming needed to be compacted.

Much has changed, of course, since those debates in 1988, not the least of which is the sophistication and excellence of the tribes' own gaming regulation. Tribes spend hundreds of millions of dollars annually regulating their gaming, both directly, through their own commissions, and indirectly, by funding the regulation done by states and the NIGC. Nonetheless, the distinctions and classifications established in IGRA in 1988 still bind the Commission, and the proposed rule seeks to identify and clarify the place at which Congress intended to separate Class II from Class III.

What is abundantly clear from a study of the Act's language and the Act's legislative history is that Congress intended to distinguish between uncompacted and compacted gaming. If that separating line is not clear and identifiable, Congress's intention will not be fulfilled.

Since the Act's adoption in 1988, the world has changed, and computerization has transformed whole sectors of our economy and society, including gaming. Those advances challenge the legislative language that pre-dates them. Nevertheless, that language continues to govern these distinctions. Unless or until that language or the mission of the NIGC—in part to promulgate Federal standards for Indian gaming—is changed, the Commission's interpretations must be based on them.

The other legislation, of course, which applies to the use of gambling equipment on Indian lands is the Johnson Act. *See* 15 U.S.C. 1171. Since it was enacted in 1953, the Johnson Act has provided that there could be no ''gambling devices'' in Indian Country, and the term ''gambling devices'' was thereafter broadly interpreted.

The passage of IGRA in 1988 changed this in two ways. ''Gambling devices'' could be used on Indian lands if they were used pursuant to Class III tribal-state compacts, and tribes could use computers and electronic and technologic aids in the play of Class II bingo and similar games.

As Indian gaming grew and the Indian gaming industry developed under IGRA's framework, tribes increasingly turned to technology. When electronic and technologic features were introduced in the absence of a tribal-state compact, some were viewed by Federal investigators and prosecutors as ''gambling devices.'' The Ninth Circuit held that an all-electronic form of pull tabs to be an electronic facsimile game of chance, notwithstanding the argument that players were playing against other players and not against the machine they were using. The electronic replication of the traditional Class II pull tab game was deemed a Class III electronic facsimile and hence prohibited on Indian lands in the absence of a compact. *See Sycuan Band of Mission Indians* v. *Roach*, 54 F.3d 535 (9th Cir. 1995).

By contrast, in a series of decisions involving an electronic bingo game called MegaMania, courts considered electronic, computerized player stations, which interconnected a minimum of 12 players and displayed bingo cards and bingo balls to them. Each game took from two to three minutes to play. Again, those responsible for enforcement of the Johnson Act challenged the player stations as ''gambling devices'' requiring a compact for play. These challenges failed. Accordingly, the player stations were indeed only ''aids'' to the play of bingo, which Congress provided for in IGRA as Class II, and not electronic facsimiles of a game of chance. Those courts, however, were careful to note that their conclusions were limited to the facts of the cases presented. *See U.S.* v. *162 Megamania Gambling Devices*, 231 F.3d 713, 725 (10th Cir. 2000), *U.S.* v. *103 Electronic Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000).

Similarly, in a series of cases dealing with dispensers of paper pull tabs known as Lucky Tab II and Magical Irish, the enforcers of the Johnson Act became concerned when the manufacturers of these machines added video displays to the machines. The video displayed winning and losing pull tabs by depicting slot machine-type

reels and showing winning and losing combinations. These dispensers, it was said, were ''gambling devices'' and could only be played in a compacted Class III arrangement. The courts disagreed. Notwithstanding the use of the entertaining displays to show slot machine-like results, those displays were not essential to the game. The play of the game was ''in the paper''—it was the pull tabs themselves, and only the pull tabs, that determined the outcome of the game. Thus, these courts concluded, the electronic dispensers were only aids to the play of the game of pull tabs and permissible without a Class III compact. Again, the courts limited their holdings to circumstances before them. *See Diamond Game Enterprises* v. *Reno*, 230 F.3d 365 (DC Cir. 2000), *Seneca-Cayuga Tribe of Okla.* v. *NIGC*, 327 F.3d 1019, 1031 (10th Cir. 2003).

Thereafter, these technologies—interconnected bingo player stations and slot machine-type video displays (not determinative of results)—were coupled, and currently most electronic bingo systems employ such technology. Most such systems display the results of the bingo game in an electronic bingo card on the equipment's video display.

Such technological advances have greatly increased the speed with which bingo is played and have made the experience of playing very similar to the experience of playing conventional slot machines.

In adopting IGRA, Congress observed that while computers, electronic and technologic aids may assist the play of Class II games, a Class III facsimile results if those electronic aids incorporate all of ''the fundamental characteristics'' of the Class II games. *See* S. Rep. No. 100–466, at 8 (1988). This, the Commission believes, is precisely the issue raised by the proliferation of so-called ''one touch games''—inter-connected electronic bingo player stations with which players initiate and complete play of a bingo game with the single touch of the screen or a button.

In such instances, the equipment has ceased to be an ''aid'' to the play of the game, and has become one of those ''electronic facsimiles of games of chance'' which Congress placed in Class III. When the equipment automatically, electronically automates the play of the game and the players' participation in the game, the Commission believes that the play is no longer ''outside'' the equipment and that the electronic equipment can no longer be characterized as merely an aid. All player attention, discretion, and interface has been automated by the equipment.

Beyond this, the full electronic automation of bingo creates distortions in the way bingo is played. There is considerable significance to being the first player to ''win'' the bingo game by getting a ''bingo'' or the game-ending pattern. Many current, fully electronic games, however, often place minimum significance on this important characteristic of bingo and rather award the principal prizes to interim or consolation patterns and winners. There is less competition among players—a fundamental characteristic of bingo—for these interim prizes than there is for the game-ending prize. If multiple players hit the game-ending prize simultaneously, the common practice is to split the prize among them. By contrast, it is often the case that players who hit interim prizes are awarded the full prize, without regard to the number of other players who have also hit it.

II. Background

The Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (''IGRA'' or ''Act''), enacted by the Congress in 1988, establishes the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

''Class I gaming'' means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes are the exclusive regulators of Class I gaming. 25 U.S.C. 2710(a)(1).

''Class II gaming'' means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games so long as they are not house banking games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming, however, are banking card games such as blackjack, electronic or electromechanical facsimiles of any game of chance, and slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. 25 U.S.C. 2710(a)(2). Indian tribes can engage in such gaming without any state involvement.

''Class III gaming'' includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including most forms of casino-type gaming such as slot machines of any kind, electronic or electromechanical facsimiles of any game of chance, roulette, banking card games such as blackjack, and pari-mutuel wagering. Class III gaming may be conducted lawfully only if the state in which the tribe is located and the tribe reach an agreement called a tribal-state compact. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior if the tribe and the state have not reached agreement or if the state has refused to negotiate in good faith toward an agreement. The tribal-state compact or Secretarial procedures may contain provisions for concurrent state and tribal regulations of Class III gaming. In addition, the United States Department of Justice possesses exclusive criminal and certain civil jurisdiction over Class III gaming on Indian lands.

As a legal matter, Congress defined the parameters for game classification when it enacted IGRA. As a practical matter, however, the Congressional definitions were general in nature and specific terms within the broad gaming classifications were not explicitly defined. The Commission adopted regulations in 1992 that included definitions for many terms used in the statutory classification scheme, including ''electronic or electromechanical facsimile'' (25 CFR 502.7), ''electronic computer or other technologic aid'' (25 CFR 502.8), and ''other game similar to bingo'' (25 CFR 502.9). The Commission revised the definitions in 2002. *See* 67 FR 41166, Jun. 17, 2002, for an extensive discussion of the reasons for the Commission's decision to revise these key terms. However, the Commission did not define the many other terms used in conjunction with the various Class II games.

A recurring question as to the proper scope of Class II gaming involves the use of electronics and other technology in conjunction with bingo and lotto as well as pull tabs, instant bingo, and other games similar to bingo that may be Class II if played in a location where Class II bingo is played. In IGRA, Congress recognized the right of tribes to use ''electronic, computer or other technologic aids'' in connection with these forms of Class II gaming. Congress provided, however, that ''electronic or electromechanical facsimiles of any game of chance or slot machines of any kind'' constitute Class III gaming. Because a tribe wishing to conduct Class III gaming may do so only in accordance with an approved tribal-state compact, it

is important to distinguish the two classes.

Currently, the distinction between an electronic ''aid'' to a Class II game and an ''electronic facsimile'' of a game of chance, and therefore a Class III game, is often unclear. With advances in technology, the line between the two has blurred. When in IGRA, Congress defined ''the game of chance commonly known as bingo,'' 25 U.S.C. 2703(7)(A), it could not have foreseen the technological changes that would affect all games of chance. Likewise, by allowing electronic aids to the game of bingo, Congress could not have foreseen that some vendors and gaming operators would be unable or unwilling to distinguish between Class II games, which tribes regulate, and Class III facsimiles, which require compacts between tribes and states. The Commission is concerned that the industry is dangerously close to obscuring the line between Class II and Class III. It believes that the future success of Indian gaming under IGRA depends upon tribes, states, and manufacturers being able to recognize when games fall within the ambit of tribal-state compacts and when they do not.

Against this backdrop, the Commission has determined that it is in the best long term interest of Indian gaming to issue classification standards clarifying the distinction between ''electronic, computer, and other technologic aids'' used in the play of Class II games and other technologic devices that are ''electronic or electromechanical facsimiles of a game of chance'' or slot machines.

As the Commission worked through a process to develop these classification standards, it became apparent that the revised definitions issued by a divided Commission in June 2002, *See* 67 FR 41166, Jun. 17, 2002, did not provide the clarity that had been a goal in that rulemaking. Accordingly, the Commission proposes further revisions to the definitions for the terms ''electronic or electromechanical facsimile'' in a separate rulemaking.

III. Development

On May 25, 2006, the NIGC published two Notices of Proposed Rulemaking in the **Federal Register**. The goal of these proposed rules was to clearly distinguish technologically-aided Class II games from Class III ''electronic or electromechanical facsimiles of any game of chance'' or ''slot machines of any kind.''

The first notice, 71 FR 30232, May 25, 2006, detailed a proposed change to the definition for ''electronic or electromechanical facsimile'' that is contained in 25 CFR 502.8. The proposed change to the definition clarified that facsimiles of bingo are not permissible Class II games under the IGRA.

The second notice, 71 FR 30238, May 25, 2006, likewise further revised the definitions for ''electronic or electromechanical facsimile'' and ''other games similar to bingo.'' The proposed revision to the definition for ''electronic or electromechanical facsimile'' clarified that games under this section that comply with 25 CFR 546 would not be electronic or electromechanical facsimiles of any game of chance. The proposed revision to the definition for ''other games similar to bingo'' shifted the focus for the classification determination from whether the game is house-banked to whether the game had players competing against other players for the prizes. The proposed revision removed the requirement, not present in IGRA, that these games not be house-banked. The proposed revision also strengthened the requirement that the games involve players competing against other players for a common prize or prizes. Additionally, the proposed rule defined other terms used in Class II games that had not been previously defined. The proposed rule defined the following terms: Game, lotto, bonus prize, progressive prize, sleep, game of pull-tabs, electronic pull-tab, and instant bingo.

The second notice also added a new part to the Commission's regulations (25 CFR 546) that explained the basis for determining whether a game of bingo or lotto, and ''other game similar to bingo,'' or a game of pull-tabs or ''instant bingo,'' meets the IGRA statutory requirements for Class II gaming, when these games are played electronically, primarily through an ''electronic, computer or other technologic aid,'' while distinguishing them from Class III ''electronic or electromechanical facsimiles.''

Consultation/Comments

The development of the proposed rule began formally with the March 31, 2004, appointment of an advisory committee comprised of tribal government representatives with substantial experience in gaming regulation and operations. A detailed history of the advisory committee's work to that point is published in the preamble to the original proposed rule. 71 FR 30232, May 25, 2006. After publishing these notices the Commission embarked on an extensive consultation schedule, meeting with over 69 tribes in individual meetings. Additionally, the Commission held a day-long hearing and heard testimony from tribes, manufacturers, test labs, and state regulators.

IV. New Proposal

Despite the withdrawal of the regulations the Commission still believed that regulations distinguishing technologically-aided Class II games from Class III ''electronic or electromechanical facsimiles of any game of chance'' or ''slot machines of any kind'' were still needed. The Commission gave much thought to the direction it needed to take and is now proposing regulations that take into account many of the concerns voiced during the previous consultation and comment period.

V. Changes from Original Proposal

The new proposed regulations differ in some significant ways from the original proposal. When these regulations were first proposed there was considerable criticism that the proposed rules would result in great economic hardship to tribes and manufacturers. The economic impact study commissioned by the NIGC supported this proposition. The Commission withdrew the proposed regulations and after careful examination decided to make several changes. These changes, described below, have the added benefit of reducing the economic impact of compliance with the regulations.

Player Interaction/Speed of Game

One of the defining characteristics of the game of bingo is that the winner is the first person to cover a previously designated arrangement of numbers or patterns. Implicit in this requirement is the notion that a player must make some overt action to win the game. It is for this reason that the Commission has required that players cover/daub after the numbers or patterns have been released. Originally, the Commission felt it was necessary to have at least two releases of numbers or patterns to ensure that there was truly a competition among the players to be the first to cover. Further, the Commission felt that the release of numbers should be over a period of two seconds to ensure that players were fully engaged in the game. The Commission has given this great thought and has tentatively concluded that this goal may be achieved by requiring only that players press a button to start the game and then press at least one more time to cover and claim their prize. Therefore, the new proposed regulations eliminate a

required daub as well as the required time period for the release of objects.

Patterns

As stated above, essential to the play of bingo is that individuals are competing against each other to be the first to obtain a previously designated arrangement of numbers or designations. The original proposal placed a restriction on the use of different patterns reasoning that players must be competing for the same winning pattern. The Commission extended this reasoning to include not only the game-winning prize but also any prizes offered. Upon further consideration the Commission felt it could be less restrictive by allowing bonus patterns to differ and still achieve the goal that players play against each other for the game-winning pattern. Therefore the use of different patterns for bonus prizes is now permitted under the proposed regulations.

Appearance

One of the primary goals of these classification standards is to enable tribes and regulators to distinguish Class II and Class III. The original proposal required that each machine display the message ''This is a Game of Bingo'' or ''This is a Game of Pull-Tabs'' in two inch letters. The Commission still believes that it is important to identify the game clearly but felt that a less intrusive method for doing so could accomplish this goal. The current proposed rule requires only that this message be prominently displayed giving manufacturers and tribal regulators more flexibility.

Lab Certification

For these regulations to be effective there must be a method for determining compliance with them before technologic aids are placed on the gaming floors. The easiest way to accomplish this goal is to have certified testing laboratories test the devices and certify that they comply with the criteria established by these standards. In the Commission's original proposal it was the responsibility of the NIGC to determine which labs were suitable to conduct this testing. However, after further consideration the Commission has determined that tribal gaming regulatory authorities are better suited to this task and in many instances are already certifying labs as being suitable to conduct testing. These regulations place the responsibility for approving gaming laboratories on the tribal gaming regulatory authority with certain minimum criteria for determining suitability.

Grandfather Provision

Absent from the original proposal were any provisions allowing for the continued use of games that were currently in operation. During consultations great concern was expressed that the immediate compliance with the proposed regulations would cause economic devastation to some tribes as well as to some manufacturers. The present proposal includes a grandfather provision that allows for the continued use of currently existing Class II games for a period of five years. Within a period of 120 days after this rule is final each tribal gaming regulatory authority will submit a list to the Commission of the Class II game interfaces currently in use. These are the only game interfaces that will qualify under the grandfather provision. This requirement effectively freezes the number of grandfathered interfaces in use. This provision also allows for software changes that ensure the proper functioning, security, or integrity of the game. It also allows for changes to the software that do not detract from compliance with this part such as changes to pay tables or to game themes. The inclusion of a grandfather provision greatly mitigates the economic impact of these regulations. However, the proposed regulations make clear that this grandfather provision will not provide a safe harbor to those machines which could be considered Class III under any standards.

To the extent that provisions are identical to the first proposed regulations, the Commission's thinking has not changed. Under the proposed rules, the following steps describe the play of bingo, lotto, or ''other games similar to bingo'' in an electronic medium as Class II gaming. First, there is a request for entry into the game. The game can proceed when there are six players or a minimum of two players after two seconds have elapsed. There is a release of a group of numbers, one at a time. Then there is a cover opportunity for all competing players.

Permissible Class II game play for bingo, lotto, or other games similar to bingo utilizing linked player stations as ''electronic, computer or other technologic aids'' will proceed as follows: To enter and begin the game, each player selects the cards to be used by that player and requests entry into the game by selecting an amount to wager and touching a button. After the game begins, numbers must be randomly drawn or electronically determined. Numbers must be released one at a time and used immediately in real time by the competing players in the game. Selected numbers must be used in the sequence in which they are drawn in separate multiple rounds.

Players may cover each card they have in play by touching the video screen at the player station or a button showing the word ''cover'' or other similar designation. A minimum time of two seconds, or a lesser time if all players have covered, must be available for each player to accomplish the cover action. Players must be notified that they should cover their cards when the numbers are revealed. For each cover opportunity, the game must wait until at least one player covers. A player wins the game by being the first player(s) in the game to cover a pre-designated game-winning pattern and claiming the win by touching the screen or a button within the time allowed by the rules of the game, which must be at least two seconds.

A player who ''sleeps'' a potentially winning pattern forfeits the win based on that pattern. A player who fails to cover the numbers drawn within the time allowed may not later use those numbers in a prize-winning pattern other than the game-winning pattern. A bingo game cannot end until a player in the game wins the game-winning prize. The game may end at this point or other additional criteria for the end of the game may apply, such as the additional release(s) of numbers for a consolation prize(s).

Each player in a game must take overt action to cover the player's card(s) during play of the game by touching the screen or a designated button one time after each set of numbers is released. Each released number does not have to be covered individually by the player, *i.e.*, the player need not touch each specific space on the electronic bingo card where the called number or designation is located, but the player must overtly touch the screen or a designated button at least one time to cover the numbers.

The proposed regulations will also impact how these games are viewed by the player. First, the proposed rules require a notice to appear on the game cabinet informing the player that they are playing the game of bingo or a game similar to bingo. Second, a two inch by two inch card must be displayed at all times.

Economic Impact

It is likely that the proposed rule, considered separately and apart from the Commission's proposed 25 CFR part 547, ''Technical Standards for Electronic, Computer, or Other Technologic Aids used in the Play of Class II Games,'' is a major rule under

5 U.S.C. 804.2, the Small Business Regulatory Enforcement Fairness Act. In any event, the NIGC has commissioned an economic impact study of the two proposals taken together. The study makes clear that the cost to the Indian gaming industry of complying with the two proposed rules will have an annual effect on the economy of $100 million or more, at least for the first five years after adoption. Accordingly, the Commission treats the proposed rule as a major rule. The economic impact study is available for review at the Commission's Web site, *http://www.nigc.gov,* or by request using the addresses or telephone numbers above.

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

It is likely that the proposed rule is a major rule under 5 U.S.C. 804.2, the Small Business Regulatory Enforcement Fairness Act. The NIGC has commissioned an economic impact study of this proposed rule as well as a proposed rule for Technical Standards taken together. The study makes clear that the cost to the Indian gaming industry of complying with the two proposed rules will have an annual effect on the economy of $100 million or more, at least for the first 5 years after adoption. Accordingly, the Commission treats the proposed rule as a major rule.

Paperwork Reduction Act

This proposed rule requires information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is subject to review by the Office of Management and Budget. The title, description, and respondent categories are discussed below, together with an estimate of the annual information collection burden.

With respect to the following collection of information, the Commission invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of its functions, including whether the information would have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Process for Certification of games and ''electronic, computer, and other technologic aids'' as meeting the Classification Standards, proposed 25 CFR 546.11.

Summary of information and description of need: This provision in the proposed rule establishes a process for assuring that bingo, lotto, other games similar to bingo, pull tabs, and instant bingo, played through or using electronic aids, are in fact Class II before their placement on the casino floor in a Class II operation.

This process requires a tribe's gaming regulatory authority to require that all such games or aids, or modifications of such games or aids, be submitted to a qualified, independent testing laboratory for review and analysis. That submission includes a working prototype of the game or aid and pertinent software, all with functions and components completely documented and described. In turn, the laboratory will certify that the game or aids do or do not meet the requirements of the proposed rule, and any additional requirements adopted by the tribe's gaming regulatory authority, for a Class II game. The laboratory will provide a written certification and report of its analysis and conclusions, both to the tribal gaming regulatory authority for its approval or disapproval of the game or aid, and to the Commission for its review. In the circumstance that a laboratory has misinterpreted the applicable regulations, the NIGC Chairman may object to a certifying laboratory report and require its withdrawal. This action may be reviewed by the full Commission on appeal from a tribe or manufacturer submitting the game for its certification. A Commission decision upholding the Chairman's objection will constitute a ''final agency action'' that may be appealed to federal court.

This process is necessary because the distinction between an electronic ''aid'' to a Class II game and an ''electronic facsimile'' of a game of chance, and therefore a Class III game, is often unclear. With advances in technology, the line between the two has blurred. The Commission is concerned that the industry is dangerously close to obscuring the line between Class II and Class III and believes that the future success of Indian gaming under IGRA depends upon tribes, states, and manufacturers being able to recognize which games fall within the realm of tribal-state compacts and which do not. The information collection requirements are an essential component of the process. Laboratories cannot conduct meaningful evaluation and analyses of games without documentation from the manufacturers. Tribes cannot make meaningful classification determinations without reports from the laboratories. The Commission cannot meaningfully review the process and, if necessary, object to a laboratory's findings, without reports.

Respondents: The respondents are developers and manufacturers of Class II games and independent testing laboratories. The Commission estimates that there are approximately 226 gaming tribes, 20 manufacturers and developers and five laboratories. The frequency of responses to the information collection requirement will vary.

Existing Class II games do not have to comply with this regulation for five years. After five years all existing games or aids in Class II operations that have not been classified and come within this rule must be submitted and reviewed if they are to continue in Class II operations. The useful life of such machines generally ranges between two to five years. Therefore, due to the five year grandfather provision, the Commission expects the implementation of these regulations to occur only as new Class II machines are developed and older machines replaced. The Commission expects that very few of the existing machines will be submitted to laboratories under these regulations. Consequently, the frequency of responses will be a function of the Class II market and the need or desire for new games or aids.

All new Class II machines and platforms must go through this classification process. The Commission estimates a 20% turnover in machine games in most operations and that there are approximately 25 Class II gaming systems presently in use. Consequently, there should be one to five new submissions each year with three to ten modifications. The Commission also estimates that the frequency of responses will be infrequent and occasional submissions during periods when there are a few games, aids, or modifications brought to market, punctuated by fairly steady periods of submissions when new games and aids are introduced. In any event, the Commission estimates that submissions will number approximately four to 15 in total.

Modifications will not require the same level of employee hours to submit and review. The amount of documentation or size of a laboratory certification and report is a function of the complexity of the game, equipment, or software submitted for review. Minor modifications of software or hardware that a manufacturer has already submitted and that a laboratory has previously examined are a matter of little time both for manufacturer and laboratory, while the submission and review of an entirely new game platform can be more time consuming. Unless a tribe imposes additional standards, we expect that tribes will rely on classifications performed or requested by other tribes. This latter fact is borne out by tribes' present reliance on NIGC classification opinions.

Information Collection Burden: The preparation and submission of documentation supporting submissions by developers and manufacturers (as opposed to the game or aid hardware and software per se) is an information collection burden under the Paperwork Reduction Act, as is the preparation of certifications and reports of analyses by the test laboratories. The amount of documentation or size of a laboratory certification and report is a function of the complexity of the game, equipment, or software submitted for review. Minor modifications of software or hardware that a manufacturer has already submitted and that a laboratory has previously examined are a matter of little time both for manufacturer and laboratory, while the submission and review of an entirely new game platform can be quite time consuming.

The practice of submission and review set out in the proposed rule, however, is not new. It is already part of the regulatory requirements in tribal, state, and provincial gaming jurisdictions throughout North America and the world. Manufacturers already have significant compliance personnel and infrastructure in place, and the very existence of private, independent laboratories is due to these requirements.

Accordingly, the Commission estimates that gathering and preparing documentation for a single submission requires, on average, eight hours of an employee's time for a requesting party and that following examination and analysis, writing a report and certification requires, on average, 10 hours of an employee's time for a laboratory. Modifications will take approximately half that time. Based on one to five new submissions each year and three to 10 modifications, the Commission estimates that the information collection requirements in the proposed rule will be a 20 to 80 hour burden on requesting parties. The Commission estimates that the information collection requirements in the proposed rule will be a 50 to 100 hour burden on laboratories.

We estimate that the cost to requesting parties is approximately $50 per hour and to laboratories $100 per hour. Based on these estimates requesting parties would pay in total an estimated $1000 to $4000. The total estimate for laboratory costs would range from $5000 to $10,000 per year.

Comments: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3507(d), the Commission has submitted a copy of this proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding the burden, estimates, or any other aspect of the information collection, including suggestions for reducing the burden (1) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for National Indian Gaming Commission, 725 17th St., NW., Washington DC, 20503, and (2) to Penny J. Coleman, Acting General Counsel, National Indian Gaming Commission, 1441 L. Street, NW., Washington DC 20005. Comments must be provided by November 23, 2007.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

List of Subjects in 25 CFR Parts 502 and 546

Gambling, Indian lands, Indian tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, the Commission proposes to amend its regulations in 25 CFR 502 and add a new Part 546 as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

1. The authority citation for this for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

2. Revise § 502.9 to read as follows:

§ 502.9 Other games similar to bingo.

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 U.S.C. 2703(7)(A) (i)) that constitutes a variant on the game of bingo, provided that such game requires players to compete against each other for a common prize or prizes.

3. Add a new part 546 to read as follows:

PART 546—CLASSIFICATION STANDARDS FOR BINGO, LOTTO, OTHER GAMES SIMILAR TO BINGO, PULL-TABS AND INSTANT BINGO AS CLASS II GAMING WHEN PLAYED THROUGH AN ELECTRONIC MEDIUM USING ELECTRONIC, COMPUTER, OR OTHER TECHNOLOGIC AIDS

Sec.

546.1 What is the purpose of this part?
546.2 What is the scope of this part?
546.3 What are the definitions for this part?
546.4 What are the criteria for meeting the first statutory requirement that the game of bingo, lotto, or other games similar to bingo be played for prizes, including monetary prizes, with cards bearing numbers or other designations?
546.5 What are the criteria for meeting the second statutory requirement that bingo, lotto, or other games similar to bingo be games in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?
546.6 What are the criteria for meeting the third statutory requirement that bingo, lotto, or other games similar to bingo be won by the first person covering a previously designated arrangement of numbers or designations on such cards?
546.7 What are the criteria for meeting the statutory requirement that Class II pull-tabs or instant bingo not be electronic or electromechanical facsimiles?
546.8 What is the process for approval, introduction, and verification of electronic, computer, or other technologic aids under the classification standards established by this part?
546.9 What are the steps for a compliance program administered by a tribal gaming regulatory authority to ensure that electronic, computer, or other technologic aids in play in tribal gaming facilities meet the Class II certification requirements?
546.10 When must a tribe comply with this part?

546.11 What is the effect on this part if a section is declared invalid?

Authority: 25 U.S.C. 2701 *et seq.*

§ 546.1 What is the purpose of this part?

This part clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (''IGRA'' or ''Act''). Specifically, this part explains the criteria for determining whether a game of bingo or lotto, another game similar to bingo, or a game of pull-tabs or instant bingo, meets the statutory requirements when these games are played primarily through an electronic, computer or other technologic aid. This part also establishes a process for establishing Class II certification of electronic, computer, or other technologic aids and the games they facilitate. These standards for classification are intended to ensure that Class II gaming using electronic, computer, or other technologic aids can be distinguished from Class III electronic or electromechanical facsimiles. If the technologic aid meets the requirements of this part, then the fundamental characteristics of the game have not been incorporated and the aid is not an electronic or electromechanical facsimile.

§ 546.2 What is the scope of this part?

This part is intended to address only games played solely with electronic, computer, or other technologic aids as defined in part 502.7 of this chapter.

§ 546.3 What are the definitions for this part?

(a) What is a game of bingo or other game similar to bingo? A game of the game of chance commonly known as bingo or another game similar to bingo consists of the random draw or electronic determination and release or announcement of numbers or other designations necessary to form the pre-designated game-winning pattern on a card held by the winning player and the participation of competing players to cover (daub) the numbers or other designations which appear on their card(s) when the selected numbers or other designations are released for play. A game ends when a participating player(s) claims the win after obtaining and covering (daubing) the pre-designated game-winning pattern and consolation prizes, if any, are awarded in the game.

(b) What is lotto? The term lotto means a game of chance played in the same manner as the game of chance commonly known as bingo.

(c) What is a bonus prize in the game commonly known as bingo or other game similar to bingo? A bonus prize is a prize awarded in a game in addition to the game-winning prize. The prize may be based on different pre-designated and pre-announced patterns from the game-winning pattern, may be based on achieving a winning pattern in a specified quantity of numbers or designations drawn or electronically determined and released, or a combination of these conditions. A bonus prize may be awarded as an interim prize while players are competing for the game-winning prize or as a consolation prize after a player has won the game-winning prize.

(d) What is a progressive prize in the game commonly known as bingo? A progressive prize is an established prize for a game, funded by a percentage of each player's purchase or wager, that is awarded to a player for obtaining a specified pre-designated and pre-announced pattern within a specified quantity of numbers or designations randomly drawn and released or electronically determined, or randomly drawn and released or electronically determined in a specified sequence. If the progressive prize is not won in a particular game, the prize must be rolled over to each subsequent game until it is won. The progressive prize is thus increased from one game to the next based on player buy-in or wager contributions from each qualifying game played in which the prize is not won. All contributions to the progressive prize must be awarded to the players. A winning pattern for a progressive prize is not necessarily the same as the game-winning prize pattern.

(e) What does it mean to sleep in the game of bingo or another game similar to bingo? To sleep or to sleep a bingo means that a player fails, within the time allowed by the game:

(1) To cover (daub) the previously released numbers or other designations on that player's card(s) constituting a game-winning pattern or other pre-designated winning pattern; and

(2) To claim any prize to which the player is entitled, having covered (daubed) a previously designated winning pattern, thereby resulting in the forfeiture of the prize to which the player would otherwise be entitled.

(f) What is the game of pull-tabs? In the game of pull-tabs, players purchase cards from a set of cards known as the deal. Each deal contains a finite number of pull-tab cards that includes a pre-determined number of winning cards. Each individual pull-tab within a deal is a paper or other tangible card with hidden or covered symbols. When those symbols are revealed, there is an arrangement of numbers or symbols indicating whether the player has won a prize. Winning cards with pre-established prizes are randomly spaced within the pre-arranged deal. One deal consists of all of the pull-tabs in a given game that could be purchased.

(g) What is an electronic pull-tab? An electronic pull-tab is an electronic facsimile of a pull-tab that is displayed on a video screen.

(h) What is instant bingo? In instant bingo, a player purchases a card containing a pre-selected group of numbers or designations; the winning cards are those in which the pre-selected group of numbers or designations on the card matches the preprinted winning arrangement indicated elsewhere on the card. The game is functionally the same as pull-tabs.

§ 546.4 What are the criteria for meeting the first statutory requirement that the game of bingo, lotto, or other games similar to bingo be played for prizes, including monetary prizes, with cards bearing numbers or other designations?

(a) Each player in the game must play with one or more cards. Each player in the game must obtain the card or cards to be used by that player in the game before numbers or other designations for the game are randomly drawn or electronically determined. Players cannot change cards once play of a particular bingo game has commenced. Electronic cards are permissible.

(b) Electronic cards in use by a player must be displayed prominently and must be clearly visible to that player during game play. If multiple electronic cards are used by a player, the game must offer the player the capability of seeing each one of his or her cards. At the conclusion of the game, each player must see his or her card with the highest value prize or, if no prize was won, the card closest to a bingo win. At no time shall an electronic card measure less than two inches by two inches or four square inches if other than a square card is used.

(c) For a game of bingo, each card must contain a five by five grid of spaces. Each space will contain a unique number or other designation which may not appear twice on the same card. The card may contain one free space without a specified number or other designation, provided the free space is in the same location on every card in play or available to be played in the game.

(d) Each game shall prominently display the following message: ''THIS IS A GAME OF BINGO'' or ''THIS IS A GAME SIMILAR TO BINGO.''

(e) As a variant of bingo, in another game similar to bingo, each card must

contain at least three equally sized spaces. Each space will contain a unique number or other designation which may not appear twice on the same card. One space may be designated a free space provided the card has at least three other spaces.

(f) When a number or other designation is covered, the covering must be indicated on the card by a change in the color of the space, a strike-out through the space, or some other readily apparent visual means.

(g) All prizes in the game, except for progressive prizes, must be fixed in amount or established by formula and disclosed to all participating players in the game. Random or unpredictable prizes are not permitted.

(h) Each game must have a winning player and a game-winning prize must be awarded in every game. The pattern designated as the game-winning pattern does not need to pay the highest prize available in the game. A game-winning prize may be less than the amount wagered, provided that the prize is no less than one cent.

(i) Other patterns may be designated for the award of bonus prizes in addition to the prize to be awarded based on the game-winning pattern. Each such designated pattern or arrangement must also be disclosed to the players upon request before the game begins.

(j) The designated winning patterns and the prizes available must be explained in the rules of the game, which must be made available to the players upon request.

(k) A bonus prize in a game that is designated as an interim prize must be awarded in a random draw or electronic determination and release of numbers or other designations that is no more than the exact quantity of numbers or designations that are needed for the game-winning player to achieve the game-winning pattern.

(l) A bonus prize in a game that is designated as a consolation prize may be awarded after the game-winning pattern is achieved and claimed by a player but only after a subsequent release of randomly drawn or electronically determined numbers or other designations has been made.

(m) A progressive prize may be awarded only if the game also provides a game-winning prize as described elsewhere in this part.

(n) All prizes in a game, including progressive prizes, must be awarded based on the outcome of the game of bingo and may not be based on events outside the selection and covering of numbers or other designations used to determine the winner in the game and the action of the competing players to cover the pre-designated winning patterns. The prize structure must not rely on an additional element of chance other than the play of bingo.

(o) Bingo and other games similar to bingo may offer an alternative display of the results of the game in addition to the display of the game results on the electronic bingo card, provided that the player has the option to disable the alternative display and play using only the electronic card display. An alternative display may include game theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels.

§ 546.5 What are the criteria for meeting the second statutory requirement that bingo, lotto, or other games similar to bingo be one in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?

(a) In a game of bingo, the numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool containing 75 such numbers or other designations and used in the sequence in which they are drawn. Each game will permit the random draw and release or electronic determination of all numbers or designations in the pool. A common draw or electronic determination of numbers or designations may be utilized for separate games that are played simultaneously.

(b) As a variant of bingo, in another game similar to bingo, the numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool of such numbers or other designations greater in number than the number of spaces on the card used in the game.

(c) All numbers or other designations used in the game must be randomly drawn or electronically determined after the cards to be used in the game have been assigned to or selected by the players in the game. The cards cannot have pre-covered numbers or other designations.

(d) The numbers or other designations randomly drawn or electronically determined must be used in real time and not stored for later use. The numbers or other designations must be used in the sequence in which they are drawn.

(e) To cover (daub), a player in a game must take overt action after numbers or designations are released by touching the screen or a designated button. A player must cover (daub) at least one time after a set of numbers or other designations are released. The overt action of covering (daubing) may be done simultaneously with claiming.

(f) Each released number or designation does not have to be covered (daubed) individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located. However, the player must have the opportunity to cover (daub) by touching the screen or a designated button at least one time when those numbers or other designations are released, if those numbers or other designations appear on the player's card. Following this action by a player, the video screen at that player interface will display a different color on the number or designation on that player's card, a strike-out through the space, or some other readily apparent visible characteristic if that number or designation has been properly covered (daubed) by the player. Players must be notified that they should cover (daub) their cards and claim their prize when the numbers or designations are revealed.

(g) Games may not include a feature whereby covering (daubing) after a release occurs automatically or without overt action taken by the player following the release.

(h) All players in a game, and not just a winning player, must be required by the rules of the game to cover (daub) the selected numbers or other designations that appear on their card when those numbers or other designations are released as an indication of their participation in a common game.

(i) Players must cover (daub) after numbers or designations are released in order to achieve any winning pattern. In the event of multiple releases of numbers, a player may later cover (daub) numbers or designations slept following a previous release (catch up) for use in obtaining the game-winning pattern. Failure to cover (daub) after each release results in the player forfeiting use of those numbers or other designations in any other pattern in the game. For bonus prizes and progressive prizes, if a player fails to cover (daub) one or more numbers or other designations, that player cannot be awarded such prize based on a winning pattern which contains one or more of the numbers or other designations not covered (daubed) by the player. For game-winning prizes, if a player fails to cover the player may later cover (daub) the number(s) or other designations and win such prize if that player is the first player to cover all other numbers or

designations making up the game-winning pattern and claim the prize.

(j) If a player sleeps the game-winning pattern, the game must continue until a player subsequently obtains and covers (daubs) and claims the game-winning pattern.

(k) All numbers or other designations not covered (daubed) by a player must be clearly and uniquely identified as such by displaying them in a unique color, by drawing a strikeout through them, or by other readily visible means. A player who sleeps a winning pattern or a pattern yielding bonus or progressive prizes must be notified by visible message on the video screen that the pattern was slept.

(l) After all available numbers or designations that could lead to a game-winning prize have been randomly drawn or electronically determined and released (i.e. no more objects could be drawn that would assist in the formation of a game-winning prize), the game may allow an unlimited length of time to complete the last required cover (daub) and claim of the prize, or it may be declared void and wagers returned to players and prizes canceled.

(m) The gaming operation or its employees may not play as a substitute for a player.

§ 546.6 What are the criteria for meeting the third statutory requirement that bingo, lotto, or other games similar to bingo be won by the first person covering a previously designated arrangement of numbers or designations on such cards?

(a) Because the game must be won by the first person, each game must be played by multiple players. Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game, but not limit participation to two players, and must be designed to broaden participation in each common game by providing reasonable and sufficient opportunity for at least six players to enter the game. Games cannot begin until two seconds have elapsed from the time that the first player elects to play, unless six players enter. Nothing in this section is intended to limit games to six players.

(b) To establish the game as a contest in which players play against one another, the game must provide for one or more releases of selected numbers or other designations. Each release will provide one or more numbers or other designations randomly selected or electronically determined. The game may end after the first release or after subsequent releases, when the game-winning pattern is covered (daubed) and claimed. After the game-winning pattern is covered and claimed, there may be additional releases of randomly drawn or electronically determined numbers or other designations for a consolation prize(s).

(c) Each game must have one game-winning pattern or arrangement, which must be common to all players and may be won by multiple players simultaneously. Each game-winning pattern or arrangement must consist of at least three spaces, not counting any free spaces used. The game-winning pattern or arrangement must be available to players before the game begins.

(d) Other patterns or arrangements consisting of at least two spaces each, not counting free spaces, may be used for the award of bonus or progressive prizes, if the patterns or arrangements are designated and made available to players before the game begins.

(e) Events outside the play of bingo may not be used to determine the eligibility for a prize award or the value of a prize.

(f) The set of selected numbers or other designations in the first release may contain all of the numbers or other designations necessary to form the game-winning pattern on a card in play in the game. The set may contain the numbers or other designations necessary to form other winning patterns for bonus or progressive prizes. The quantity of numbers or designations in the second or subsequent releases may not extend beyond the quantity of numbers or other designations necessary to form the first available eligible game-winning pattern on a card in play in the game. There may be additional releases to allow for additional bonus prizes.

(g) Prizes can be claimed simultaneously when a player covers (daubs) to end the game.

(h) Bonus or progressive prizes may be awarded based on pre-designated patterns provided that the award of these prizes is based on the play of bingo in the same manner as for the game-winning prize. Bonus or progressive prizes may be based on different pre-designated and pre-announced patterns, on achieving a winning pattern in a specified quantity of numbers or other designations drawn or electronically determined and released, on the order in which numbers or other designations are drawn or electronically determined and released, or on a combination of these criteria. Bonus or progressive prizes may be awarded as interim prizes, before or as the game-winning prize is awarded, or as consolation prizes after the game-winning prize is awarded.

(i) In order for players to participate in a common game, the probability of achieving the game-winning prize pattern or progressive prize pattern, if any, may not vary.

(j) Prizes in a common game may be increased, or progressive prizes offered, based upon different entry wagers.

(k) The use of a pay table is permitted. The order of, or quantity of, numbers or other designations randomly drawn or electronically determined may affect the prize awarded for completing any pre-designated winning pattern in a game. A multiplier to the prize based on a winning pattern containing a specified number or other designation is permitted.

(l) A game-winning prize must be awarded in every game. If the first player or a subsequent player obtaining the pre-designated game-winning prize pattern sleeps that pattern, the game must continue until a player achieves the game-winning pattern. The same value prize must be awarded to a subsequent game-winning player in the game.

(m) Alternative result display options may only be utilized for entertainment or amusement purposes and may not be used independently to determine a winner of the game or the prizes awarded or change the results of the bingo game in any way.

(n) An ante-up format, in which a player is required to wager before each release as a condition of remaining in the game, is permissible, provided the game maintains at least two participating players. If only one player remains after one or more releases, that player will be declared the winner of the game-winning prize, and the game will end, provided that player obtains, covers (daubs), and claims the game-winning pattern. If all players leave the game before a game-winning pattern is obtained, covered (daubed), and claimed by a player, the game will be declared void and wagers returned to players.

§ 546.7 What are the criteria for meeting the statutory requirement that pull-tabs or instant bingo not be an electronic or electromechanical facsimile?

(a) Every pull-tab card or instant bingo ticket must exist in a tangible medium such as paper. Hereafter, the term pull-tabs also includes the term instant bingo. A pre-printed pull-tab must be distributed to the player as paper, plastic, or other tangible medium at the time the pull-tab is purchased. The pull-tab presented to the player must contain the information necessary for the player to determine if that player has won a prize in the game. The

information must be presented to the player in a readable format.

(b) A pull-tab card may contain more than one arrangement of numbers or symbols, but each arrangement must comport with the requirements of this section. The player must pay for all of the arrangements on that pull-tab card in advance of dispensing it.

(c) Pull-tabs that exist in a tangible medium may also be sold to players with assistance of a technologic aid that assists in the sale. The technologic aid may also read and display the contents of the pull-tab as it is distributed to the player. The results of the pull-tab may be shown on a video screen that is part of or adjacent to the technologic aid assisting in the sale of the pull-tab.

(d) The player may also purchase a pull-tab from a person or from a vending unit and place the pull-tab in a separate technologic aid that reads and displays the contents of the pull-tab.

(e) If pull-tabs contain multiple arrangements of numbers or symbols, the rules for game play must indicate the disposition of a pull-tab in a technologic aid that is only partially played, i.e. all arrangements have not been viewed in the technologic aid.

(f) A technologic aid may also show pull-tab results on a video screen using alternative displays, including game-theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels. Options for players found in this alternative display may not determine a winner of the game or the prizes awarded or change the results of the pull-tab game in any way.

(g) If the pull-tab is a winning card, it must be redeemable for a prize when presented at the location in the gaming facility designated by the gaming operator.

(h) A pull-tab may not be generated or printed at the player station.

(i) For technologic aids that are larger than the pull-tab, the machine shall prominently display the following message: ''THIS IS THE GAME OF PULL-TABS.''

(j) The results on the pull-tab shall be no smaller than an eight point font.

(k) A pull-tab game is an electronic facsimile if the pull-tab does not exist in paper, plastic, or other tangible medium at the point of sale and is displayed only electronically.

(l) Pull-tabs that exist in a tangible medium but that are electronically or optically read and transformed into an electronic medium and made available to the player only as depictions on a video screen (and not presented directly to the player in the tangible medium) are electronic facsimiles.

§ 546.8 What is the process for approval, introduction, and verification of electronic, computer, or other technologic aids under the classification standards established by this part?

(a) An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the ''requesting party'') wishing to have games and associated electronic, computer, or other technologic aids certified as meeting the classification standards established by this part must submit the games and equipment to a testing laboratory recognized by the tribal gaming regulatory authority under this part. The requesting party must support the submission with materials and software sufficient to establish that the game and equipment meets classification standards, any other applicable regulations of the Commission, and provide any other information requested by the testing laboratory.

(b) For an electronic, computer, or other technologic aid to be certified as meeting the classification standards under this part, the tribe shall require the following:

(1) The testing laboratory will evaluate and test the submission to the standards established by this part and any other applicable regulations of the Commission. Issues that concern an interpretation of the standards or the certification procedure identified during the evaluation or testing process, if any, will initially be discussed between the testing laboratory and the requesting party. In the event of impasse, the requesting party and the testing laboratory may jointly submit questions concerning the issue to the Chairman, who may decide the issue. Questions regarding additional tribal standards will be addressed to the appropriate tribal gaming regulatory authority.

(2) At the completion of the evaluation and testing process, the testing laboratory will provide a formal written report to the requesting party setting forth its findings and conclusions. The testing laboratory will also forward a copy of its report to the Commission. The report may be made available upon request to any interested tribal gaming regulatory authority by the requesting party or by the testing laboratory. Each testing laboratory will maintain a detailed listing of the electronic, computer or other technologic aids it certifies.

(3) Each report from a testing laboratory must state the name of the requesting party; the type of game evaluated; name(s) and version(s) of the game played with the electronic, computer, or other technologic aid being evaluated; all associated game themes under which the game will be played on the technologic aid being evaluated; findings regarding game features and manner of play; a checklist of the standards established by this part and any other applicable regulations of the Commission together with an indication of the results of testing and evaluation to each particular standard; and, a summary conclusion as to whether the gaming conducted with the aid meets the requirements of this part and any other applicable regulations of the Commission. A supplemental report addressing additional game themes or other non-play features may follow as necessary, and will contain a statement verifying that gaming conducted with the aid continues to meet the requirements of this part and any other applicable regulations of the Commission.

(4) Each report will also include one or more unique signatures or checksum values for the operating programs used with the electronic, computer, or other technologic aid.

(5) In certifying a game or an electronic, computer, or other technologic aid for Class II play, a requesting party or a tribe may not rely on a report from a testing laboratory owned or operated by that requesting party or that tribe.

(c) The Commission will maintain a generalized listing of games and electronic, computer, or other technologic aids certified by recognized testing laboratories as meeting the classification standards established by this part and any other applicable regulations of the Commission. The Commission will make its listing available to the public. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(d) Additional requirements established by a tribal gaming regulatory authority.

(1) A tribal gaming regulatory authority may establish additional classification standards that extend and exceed the standards established by this part and any other applicable regulations of the Commission. It may require additional testing and certification to its own extended standards as a condition to operation of the game and associated electronic, computer, or other technologic aid in a gaming facility it regulates.

(2) A tribal gaming regulatory authority may elect to provide its

extended testing standards to the testing laboratories and require additional tests and certification reports applicable to its own certification of a game or electronic, computer or other technologic aid. A requesting party wishing to meet the specific tribal requirements will submit additional supporting materials and documentation to the testing laboratory as may be necessary to meet the specific tribal requirements. A testing laboratory evaluating a game and associated equipment will include in its report to the requesting party information relevant to the specific additional tribal requirements and provide a copy of the report to that tribal gaming regulatory authority and the Commission.

(e) Objections to a testing laboratory certification.

(1) (i) Within 30 days of receipt of the certification, a tribe may object to the certification by submitting a notice of objection to the Chairman. The objection shall specify the reasons why the certification is erroneous and shall include supporting documentation, if any. If a tribe timely objects, the Chairman or his or her designee shall have 60 days from receipt of the objection to concur with the tribe's objection. The Chairman or his or her designee will notify the testing laboratory, the requesting party and the sponsoring tribe of his concurrence or objection.

(ii) If no objection is submitted by a tribe, the Chairman or his or her designee will review the certifications and accompanying reports received from testing laboratories and may object to any certification issued by a testing laboratory by notification to the testing laboratory, the requesting party, and the sponsoring tribe within 60 days of receipt of the certification and report.

(iii) If the Chairman receives no objection and does not object on his or her own, the requesting party or sponsoring tribe may assume the Chairman does not object to the certification. The Chairman may object to a testing laboratory certification subsequent to the 60-day period upon good cause shown. If the Chairman finds good cause to object to the certification subsequent to the 60-day period, he or she shall do so only after providing notice to the testing laboratory, the requesting party, and the sponsoring tribe and an opportunity for a hearing.

(2) The Chairman or his or her designee will conduct additional discussions with the testing laboratory, the requesting party, and the sponsoring tribe on any game or electronic, computer, or other technologic aid to which the Chairman has objection and attempt to resolve the dispute within 30 days after receiving notice of the Chairman's objection. The Chairman and the requesting party and sponsoring tribe may agree to the appointment of a mediator or other third party to review the laboratory's certification and the Chairman's objection and provide a recommendation on the matter within this 30-day period. Following the discussions and receipt of the recommendation of the mediator or other third party, if any, the Chairman will decide the issue and inform the testing laboratory, the requesting party, and the sponsoring tribe of his or her determination.

(3) Within 30 days after receiving notice of the Chairman's determination, the requesting party or the sponsoring tribe may appeal the Chairman's determination to the full Commission by providing written notice of appeal along with documents and other information in support of the appeal. The appeal will be decided by the Commission based on the record developed by the Chairman or his or her designee and on written submissions by the testing laboratory, the requesting party, and the sponsoring tribe, unless the Commission requests additional information. The appeal will not include a hearing under Part 577 of this chapter unless directed by the Commission.

(4) If the requesting party or the sponsoring tribe does not appeal the Chairman's determination, or if the objection is upheld after review by the Commission following an appeal, the testing laboratory and the requesting party will notify any tribal gaming regulatory authority to which it has provided a certification and report on the game and associated equipment that the Chairman has objected to the certification and that the certification is no longer valid.

(5) An objection by the Chairman or his or her designee, upheld after review by the Commission, will be a final agency action for purposes of suit by the requesting party under the Administrative Procedures Act.

(f) Recognition of Testing Laboratories. (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:

(i) The testing laboratory demonstrates its integrity, independence and financial stability to the tribal gaming regulatory authority;

(ii) The testing laboratory demonstrates its relevant technical skill and capability to the tribal gaming regulatory authority;

(iii) The testing laboratory is not owned or operated by the tribe or tribal gaming regulatory authority; and

(iv) The tribal gaming regulatory authority:

(A) Makes a suitability determination of the testing laboratory based on requirements no less stringent than required by § 533.6(b)(1)(ii)—(v) and § 533.6(c) of this chapter and based upon no less information than that required by § 537.1 of this chapter, or

(B) Accepts, in its discretion, a determination of suitability for the testing laboratory made by any other gaming regulatory jurisdiction in the United States.

(v) After reviewing the information provided by the testing laboratory, the tribal gaming regulatory authority may, in its discretion, determine that the testing laboratory is qualified to perform testing and evaluation for games played using electronic, computer, or other technologic aids that are offered for use in Class II gaming.

(2) The tribal gaming regulatory authority shall:

(i) Maintain a record of all determinations made pursuant to paragraphs (f)(1)(iv) and (f)(1)(v) of this section for a minimum of three years and shall make the records available to the Commission upon request. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(ii) Place the testing laboratory under a continuing obligation to notify it of any adverse regulatory action in any jurisdiction where the testing laboratory conducts business.

(ii) Require the testing laboratory to provide notice of any material changes to the information provided to the tribal gaming regulatory authority.

§ 546.9 What are the steps for a compliance program administered by a tribal gaming regulatory authority to ensure that electronic, computer, or other technologic aids in play in tribal gaming facilities meet Class II certification requirements?

(a) In regulating Class II gaming, a tribal gaming regulatory authority will institute a compliance program that ensures bingo, lotto, and other games similar to bingo and pull-tabs and instant bingo in use in its gaming facilities, which are operated and played with electronic, computer, or other technologic aids required to be certified by this part, meet the requirements of this part, any other

applicable regulations of the Commission, and any additional tribal standards adopted by the tribal gaming regulatory authority. The program must include the following elements:

(1) Determination by the tribal gaming regulatory authority that electronic, computer, or other technologic aids, along with the games played thereon, required to be certified as meeting the standards established by this part, have been tested and certified by a laboratory recognized under § 546.8(f) of this part as meeting all applicable Class II standards before the equipment is placed for use in the gaming operation.

(2) Internal controls that prevent unauthorized access to game control software to preclude modifications that would cause the electronic, computer, or other technologic aid and the games played therewith to potentially fail to meet the required standards.

(3) Periodic testing of all of the servers and a random sample of the electronic components and software to validate that the equipment and software continue to meet the required standards and are identical to that tested and certified by the testing laboratories.

(b) In authorizing particular Class II gaming within a gaming facility it licenses, a tribal gaming regulatory authority shall, at a minimum, require a finding and certification by an independent gaming testing laboratory, recognized by the tribal gaming regulatory authority under this part, that each electronic, computer, or other technologic aid used in connection with such gaming meets the standards of this part. If the tribe's gaming regulatory authority has established classification standards that apply additional criteria, the tribe shall require additional findings consistent with the additional standards as a condition to authorizing a technologic aid for use and play in the gaming facilities it regulates.

(c) The tribal gaming regulatory authority shall maintain a current listing of each electronic, computer, or other technologic aid including servers, player interfaces, and each game program it has authorized for play under the classification standards governed by this part, indicating that all such games meet the classification standards established by this part and any additional standards established by the tribe. The listing will show the asset identification number(s) of each electronic, computer, or other technologic aid including servers and player interfaces and the manufacturer's name; version number(s), game theme titles and other unique identifier(s), of the game operating software, for the games authorized for play as documented in a certification report(s) issued by a testing laboratory.

§ 546.10 When must a tribe comply with this part?

(a) Tribes must comply with this part when placing Class II electronic, computer, or other technologic aids governed by this part in operation after [Insert 120 days after effective date].

(b) Tribes using Class II technologic aids governed by this part on or before [Insert 120 days from the effective date], may continue to operate those electronic, computer or other technologic aids for a period of five years from the same date. During this period technologic aids may be sold, leased, or otherwise transferred to another tribe.

(c) Individual hardware components of technologic aids governed by this part and in use on or before [Insert 120 days from effective date] may be repaired or replaced to ensure the proper functioning, security, or integrity of the game. All new software versions must be certified under this part except for changes made to ensure the proper functioning, security, or integrity of the game and changes that will not detract from the games overall compliance with the requirements of this part.

(d) On or before [Insert 120 days from the effective date], each tribal gaming regulatory authority shall submit to the Commission the list required by § 546.9(c) of this part.

(e) Nothing in this section is intended to authorize the continued operation of uncompacted Class III machines that allow a player to play against the machine.

§ 546.11 What is the effect on this part if a section is declared invalid?

If any provision of this part be declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of this part.

Dated: October 17, 2007.

Philip N. Hogen,

Chairman.

Cloyce V. Choney,

Commissioner.

Norman H. DesRosiers,

Commissioner.

[FR Doc. E7–20776 Filed 10–23–07; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 542 and 543

RIN 3141–AA37

Minimum Internal Control Standards for Class II Gaming

AGENCY: National Indian Gaming Commission (''NIGC'' or ''Commission''), Interior.

ACTION: Proposed rule.

SUMMARY: In response to the inherent risks and the need for effective controls in tribal gaming, the Commission, in January 1999, developed minimum internal control standards (MICS). Since their original implementation, it has become obvious that the MICS require technical adjustments and revisions so that they continue to be effective in protecting tribal assets, while still allowing tribes to utilize technological advances in the gaming industry. The current MICS are specific to the conduct of a wagering game without regards to whether the game is classified as a Class II or Class III game. This proposed rule is intended to supersede certain specified sections of the current MICS and replace them with a new part titled Minimum Internal Control Standards for Class II Gaming.

DATES: Submit comments on or before December 10, 2007.

ADDRESSES: Mail Comments to ''Comments on Class II MICS'' National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005. Comments may be transmitted by facsimile to 202–632–7066, or mailed or submitted to the above address. Comments may also be submitted electronically to *bingo_mics@nigc.gov*.

FOR FURTHER INFORMATION CONTACT: Joe H. Smith, Director of Audits, telephone 202–632–7003. This is not a toll free call.

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I. Development of the Proposed Rule

On February 22, 2007, the Commission held a meeting of its Classification Standards Advisory Committee. At this meeting the tribal representatives on the committee presented to the Commission a final draft of descriptive technical standards for Class II gaming. As the technical standards were being developed the Commission realized that many of the provisions considered for inclusion were not technical standards but rather internal controls. After reviewing the final technical standards draft, the Commission decided, that for the technical standards to be effective, it would have to make changes to its existing minimum internal control standards (MICS). The updating of MICS will be done in phases with the first phase limited to those areas that had a direct impact on the technical standards, specifically, bingo and other games similar to bingo.

To complete this task, the Commission requested that its standing MICS Advisory Committee embark on an aggressive schedule to complete revisions to MICS to be published concurrently with the publishing of technical standards. Additionally, the Commission requested that members of the Classification Standards Advisory Committee assist in drafting MICS revisions to ensure that any changes were consistent with the draft technical standards. During a MICS Advisory Committee meeting held on June 25, 2007, in Dallas, Texas, tribal representatives on the MICS Committee urged the Commission to adopt a format for the new MICS regulations different than the one originally proposed by the Commission. This alternative format focused on functions within a gaming facility rather than game type. Following this meeting the Commission decided to go forward with the suggested alternative format.

The tribal representatives of the MICS Committee formed a working group, referred to by them as the Tribal Gaming Working Group (TGWG), to solicit information from tribal regulators, operators, and manufacturers. Tribal representatives requested that they be allowed time to consult with this group before providing advice to the Commission. The Commission agreed and between June and September 2007, the TGWG met several times in person and conducted numerous conference calls. The Commission did not participate in the establishment of this working group. However, Commission staff were invited to attend all of the meetings and participate in some of the conference calls. The Commission felt it was important to make staff available to this working group to answer questions about the goals of the Commission in drafting regulation revisions. Commission staff participated in this capacity during in-person meetings on July 15, 2007, in Seattle, Washington, on July 24, 2007, in Arlington, Virginia, and on August 13 and 27, 2007 in Las Vegas, Nevada.

The Commission is grateful to the tribal representatives on the MICS Advisory Committee and to those who assisted the tribal representatives for all of their hard work and for the high quality draft minimum internal control regulations that resulted from their efforts. The proposed rule is largely adopted from the final draft MICS, delivered to the Commission by the tribal representatives of the Advisory Committee on September 4, 2007.

The full committee including the Commission, met to discuss the draft on September 12, 2007, in Arlington, Virginia. During this meeting the Commission raised questions about the draft regulations and received responses from the tribal representatives. The Commission also allowed members of the audience to make comments on the draft MICS as well as the process for developing them.

There are places, of course, where the Commission felt it could not accept the MICS Committee's recommendations. As such, the Commission has proposed rules more stringent than the tribal representatives to the Advisory Committee would have preferred. Highlights of the new part, as well as a discussion of Advisory Committee recommendations the Commission did not accept are included below.

II. MICS Structure

Currently, MICS for Class II and Class III gaming are contained in 25 CFR 542. As there are some essential differences between Class II and Class III gaming, the Commission decided that there should be separate MICS for Class II and Class III gaming. Therefore, the Commission is proposing a new part 543 that would be limited to Class II gaming.

The Commission had originally planned on mimicking the structure of part 542 in the drafting of new part 543. The controls in part 542 are segregated by the type of Class II game they apply to or by an area within the gaming operation. During the drafting process the MICS Advisory Committee recommended that the Commission adopt an alternative structure for the new part. The Commission has accepted the Advisory Committee's recommendation to structure the proposed rule based on the conceptual proposition that one set of controls can be made applicable to all types and forms of the game of bingo and other games similar to bingo whether the game is played manually or electronically.

While it will eventually be necessary to bring many of the controls currently contained in part 542 into new part 543, in order to have separate and independent MICS for Class II and Class III gaming, the Commission felt it was necessary to structure this migration in phases. The most immediate concern was the controls related to bingo and other games similar to bingo. These controls were addressed first so that the current MICS would not conflict with the new proposed technical standards.

Accordingly, the proposed rule addresses only the game of bingo, other games similar to bingo, and directly related information technology controls. Many of the provisions of part 542 will remain effective and applicable to class II games until such time as replacement regulations are enacted by the Commission.

The second phase of this process of developing a comprehensive set of Class II MICS will address forms of Class II gaming other than bingo and games similar to bingo, such as pull-tabs and poker, and will codify the rules governing the processes that support the games, such as drop and count, cage, credit and internal audit. Furthermore, just as with part 542, the concept of tier classification will be preserved, so that smaller gaming operations will be held to a set of MICS better tailored to the risks found in small gaming operations and the resources available for addressing them.

III. Tier Structure

The proposed rule allows an exemption, commonly referred to as the small and charitable exemption, for gaming operations earning less than $1 million in gross gaming revenue. A proposal was made to increase the threshold from $1 million to $3 million. The basis for the proposal was the premise that the higher threshold would be more consistent with other gaming jurisdictions, would acknowledge that smaller gaming operations may not have the resources to invest in the specified controls and, in all likelihood, the inherent risk associated with their games do not justify them. The Commission appreciates that the burden of compliance may be heavier on smaller gaming operations than larger ones that may have greater resources to allocate to internal controls. The

Commission has concluded that the tier structure mitigates impact on small operations. Therefore, the Commission has decided to keep the $1 million dollar ceiling for the small and charitable gaming exemption.

IV. Small and Charitable Gaming Operations

Small and charitable operations are required to adopt tribal internal controls that, at a minimum, protect the integrity of the games offered and safeguard the assets used in connection with the operation. The Commission has added a requirement that the gaming operations must create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

V. Tribal Internal Control Standards

The tribal representatives on the Advisory Committee proposed that a regulation be included stipulating that only applicable standards shall apply to the tribe's gaming operation(s). The Commission disagrees. The proposed new section 543.3(c) addresses the issue by requiring that the tribe's gaming regulatory body adopt tribal internal control standards that equal or exceed those set forth in the proposed rule. Furthermore, within the preamble to part 542 final rule, published June 2002, the question was addressed as follows, ''Indian gaming is and always will be very diverse. The Commission therefore recognizes that developing one set of MICS to address all situations in every tribal gaming operation is not possible. It is not intended for Tribes to simply adopt these MICS verbatim as tribal internal control standards. Instead, Tribal gaming regulatory authorities should utilize the following to develop their own internal control standards as provided for in section 542.3(c) of this part.''

VI. Alternative Procedures

The tribal representatives on the Advisory Committee proposed that a regulation be adopted that would authorize the tribal gaming regulatory authorities to approve without federal concurrence, alternative procedures to those required by the new part. The Commission is not prepared to adopt such a procedure at this time. Consequently, the Commission continues to rely on the variance process contained in 25 CFR 542.18.

VII. Agents

The proposed rule utilizes the term ''agent'' in many places throughout part 543. In today's complex gaming environment it is not uncommon for support functions such as an internal audit to be outsourced, and vendors to actively participate in the maintenance of gaming related equipment and software programs. MICS, therefore, need to account for such variables. This definition is not intended, however, to allow persons to circumvent the management contract approval process or the need for licenses and background investigations for primary management officials and key employees.

VIII. Smart Cards

The present definition of smart cards contained in part 542.13 is unclear. Essentially, all smart cards are not prohibited by the MICS; only those that possess the sole source of the patron account data. If the card is accessing the account data within the cashless gaming system or the system maintains a redundant record or the card has a specified value that cannot change, used merely to transfer wagering credits to a device, the smart card is not prohibited. Accordingly, the Commission has specified which smart cards are prohibited.

IX. Manual Payouts

Proposed section 543.7(c) identifies controls applicable to manual payouts and short pays. Prize payouts over a predetermined amount, not to exceed $50,000 dollars, would require the signatures of two authorized individuals, one of whom must be a supervisor. The Commission has determined that it is an adequate control for the associated risk.

X. Promotional Prize Payouts

Proposed section 543.7(c) also provides standards applicable to promotional prize payouts. The Commission considers these types of payouts to be of a high risk. Accordingly, the signatures of two persons are required to authorize payouts exceeding $599 dollars.

XI. Patron Account Transaction Record

Proposed section 543.7(g) requires gaming operations to make available to the patron or tribal gaming regulatory authority, upon request of either, a record of the transactions occurring within a patron's wagering account.

XII. Audit Tasks to be performed at Relevant Periods

Proposed section 543.7(i) includes standards pertaining to the accounting and auditing function associated with the game of bingo and other games similar to bingo. The auditing tasks represent procedures deemed by the MICS Advisory Committee to be necessary to effectively account for and detect anomalies in server-based games' performance data. The established gaming jurisdictions provide little guidance on what minimum controls should be required by a gaming oversight body. The MICS Advisory Committee recognized that the accepted industry practice of comparing the actual performance of a gaming machine to a predetermined criterion, theoretical hold, has an awkward, if not meaningless, application to the server-based game of bingo or other games similar to bingo. The conclusion is based upon the greater volatility of a bingo game, as compared to a random number generator possessing a predetermined cycle, even if the game is affected by skill. Consequently, to mitigate the risk of foregoing the typical analysis process, alternative auditing tasks were identified and are recommended.

XIII. Inter-tribal Prize Pools

Proposed section 543.7(i) contains standards pertaining to the accounting and auditing function associated with the game of bingo and games similar to bingo. Included are controls specific to the data that a vendor would provide to a tribe relevant to the operation and maintenance of a linked prize pool. Although the proposed controls are more abbreviated than the corresponding standards in existing part 542 pertaining to linked electronic games and host and remote host locations, the proposal appears to satisfy the overall regulatory objectives of requiring the vendor to share game performance data with the participating individual locations.

XIV. Information Technology

The standards proposed at new § 543.16 reflect only those controls directly related to and deemed necessary to augment the controls pertaining to the game of bingo and other games similar to bingo. During the second phase of this overall process of enacting MICS for class II gaming, it is anticipated that additional standards will be added.

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million dollars or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. The Commission has determined that the cost of compliance with this regulation shall be minimal for several reasons. First, part 542 has been in effect since 1999 and requires that all Indian gaming operations be in compliance with the MICS. Second, considering that the Indian gaming industry spent approximately $419 million in 2006 on regulation and given the testimony of various tribal and industry leaders, it can be assumed that all gaming operations are compliant with part 542 or more stringent tribal internal control standards. Finally, given the widespread compliance with part 542, the cost of complying with new part 543 should be minimal.

Paperwork Reduction Act

This proposed regulation requires an information collection under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as did the regulation it replaces. There is no change to the paperwork requirements created by this rule.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

List of Subjects in 25 CFR Parts 542 and 543

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, the Commission proposes to amend its regulations at 25 CFR chapter III as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

1. The authority citation for part 542 continues to read as follows:

Authority: 25 U.S.C. 2702(c), 2706(b)(10).

§ 542.7 [Removed and Reserved]

2. Section 542.7 is removed and reserved effective [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 542.16 [Removed and Reserved]

3. Section 542.16 is removed and reserved effective [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

4. Add new part 543 to read as follows:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

Sec.

543.1 What does this part cover?,
543.2 What are the definitions for this part?
543.3 How do I comply with this part?
543.4–543.5 [RESERVED]
543.6 Does this part apply to small and charitable gaming operations?
543.7 What are the minimum internal control standards for bingo?
543.8–543.15 [RESERVED]
543.16 What are the minimum internal controls for information technology?

Authority: 25 U.S.C. 2701 *et seq.*

§ 543.1 What does this part cover?

This part, along with §§ 542.14 through 542.15, 542.17 through 542.23, 542.30 through 542.33, and 542.40 through 542.43 of this chapter establishes the minimum internal control standards for the conduct of Class II bingo and other games similar to bingo on Indian lands as described in 25 U.S.C. 2701 *et seq.* Throughout this part the term bingo includes other games similar to bingo.

§ 543.2 What are the definitions for this part?

The definitions in this section shall apply to all sections of this part unless otherwise noted.

Account access component, A component within a Class II gaming system that reads or recognizes account access media and gives a patron the ability to interact with their account.

Account access medium, A magnetic stripe card or any other medium inserted into, or otherwise made to interact with, an account access component in order to give a patron the ability to interact with an account.

Accountability, All financial instruments, receivables, and patron deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Actual bingo win percentage, The percentage calculated by dividing the bingo win by the bingo sales. Can be calculated for individual prize schedules or type of player interfaces on a per-day or cumulative basis.

Agent, An employee or licensed person authorized by the gaming operation, as approved by the tribal gaming regulatory authority, designated for certain authorizations, decisions, tasks and actions in the gaming operation. This definition is not intended to eliminate nor suggests that appropriate management contracts are not required, where applicable, as referenced in 25 U.S.C. 2711.

Amount in, The total value of all financial instruments and cashless transactions accepted by the Class II gaming system.

Amount out, The total value of all financial instruments and cashless transactions paid by the Class II gaming system, plus the total value of manual payments.

Bingo paper, A consumable physical object that has one or more bingo cards on its face.

Bingo sales, The value of purchases made by players to participate in bingo.

Bingo win, The result of bingo sales minus prize payouts.

Cage, A secure work area within the gaming operation for cashiers which may include a storage area for the gaming operation bankroll.

Cash equivalents, The monetary value that a gaming operation may assign to a document, financial instrument, or anything else of representative value other than cash. A cash equivalent includes, but is not limited to, tokens,

chips, coupons, vouchers, payout slips and tickets, and other items to which a gaming operation has assigned an exchange value.

Cashless system, A system that performs cashless transactions and maintains records of those cashless transactions.

Cashless transaction, A movement of funds electronically from one component to another, often to or from a patron deposit account.

Class II game, A game as described in 25 U.S.C. 2703(7)(A).

Class II Gaming System, All components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games including accounting functions mandated by part 547 of this chapter.

Commission, The National Indian Gaming Commission.

Count, The act of counting and recording the drop and/or other funds.

Count room, A secured room where the count is performed.

Count team, Agents who perform the count.

Coupon, A financial instrument of fixed wagering value, usually paper, that can only be used to acquire non-cashable credits through interaction with a voucher system. This does not include instruments such as printed advertising material that cannot be validated directly by a voucher system.

Drop, The total amount of financial instruments removed from financial instrument storage components in Class II gaming systems.

Drop period, The period of time that occurs between sequential drops.

Electronic funds transfer, A transfer of funds to or from a Class II gaming system through the use of a cashless system, which are transfers from an external financial institution.

Financial instrument, Any tangible item of value tendered in Class II game play including but not limited to bills, coins, vouchers, and coupons.

Financial instrument acceptor, Any component that accepts financial instruments.

Financial instrument storage component, Any component that stores financial instruments.

Game software, The operational program or programs that govern the play, display of results, and/or awarding of prizes or credits for Class II games.

Gaming Equipment, All electronic, electro-mechanical, mechanical or other physical components utilized in the play of Class II games.

Independent, The separation of functions so that the person or process monitoring, reviewing or authorizing the controlled transaction(s) is separate from the persons or process performing the controlled transaction(s).

Inter-tribal prize pool, A fund to which multiple tribes contribute from which prizes are paid to winning players at a participating tribal gaming facility and which is administered by one of the participating tribes or a third party, (e.g. progressive prize pools, shared prize pools, etc.).

Internal audit, means persons who perform an audit function of a gaming operation that are independent of the department subject to audit. Independence is obtained through the organizational reporting relationship, as the internal audit department shall not report to management of the gaming operation. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined. Internal audit personnel may provide audit coverage to more than one operation within a tribe's gaming operation holdings.

Kiosk, A self serve point of sale or other component capable of accepting or dispensing financial instruments and may also be capable of initiating cashless transactions of values to or from a patron deposit account or promotional account.

Manual payout, The payment to a player of some or all of a player's accumulated credits (e.g. short pays, cancelled credits, etc.) or an amount owed as a result of a winning event by an agent of the gaming operation.

MICS, Minimum internal control standards in this part.

Non-cashable credit, Credits given by an operator to a patron; placed on a Class II gaming system through a coupon, cashless transaction, or other approved means; and capable of activating play but not being converted to cash.

Patron deposit account, An account maintained on behalf of a patron, for the purpose of depositing and withdrawing cashable funds for the primary purpose of interacting with a gaming activity.

Patron deposits, The funds placed with a designated cashier by patrons for the patrons' use at a future time.

Player interface, Any component(s) of a Class II gaming system, including an electronic or technological aid (not limited to terminals, player stations, handhelds, fixed units, etc.) that directly enable(s) player interaction in a Class II game.

Player tracking system, A system typically used by a gaming operation to record the amount of play of an individual patron.

Prize payout, A transaction associated with a winning event.

Prize schedule, A set of prizes available to players for achieving pre-designated patterns in Class II game(s).

Program Storage Media, An electronic data storage component, such as a CD-ROM, EPROM, hard disk, or flash memory on which software is stored and from which software is read.

Progressive prize, A prize that increases by a selectable or predefined amount based on play of a Class II game.

Promotional account, A file, record, or other data structure that records transactions involving a patron or patrons that are not otherwise recorded in a patron deposit account.

Promotional prize payout, Merchandise or awards given to players by the gaming operation which is based on gaming activity.

Random number generator (RNG), A software module, hardware component or combination of these designed to produce outputs that are effectively random.

Server, A computer which controls one or more applications or environments.

Shift, An eight-hour period, unless otherwise approved by the tribal gaming regulatory authority, not to exceed 24 hours.

Short pay, The payment of the unpaid balance of an incomplete payout by a player interface.

Tier A, Gaming operations with annual gross gaming revenues of more than $1 million but not more than $5 million.

Tier B, Gaming operations with annual gross gaming revenues of more than $5 million but not more than $15 million.

Tier C, Gaming operations with annual gross gaming revenues of more than $15 million.

Tribal Gaming Regulatory Authority, The entity authorized by tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

Voucher, A financial instrument of fixed value that can only be used to acquire an equivalent value of cashable credits or cash through interaction with a voucher system.

Voucher System, A component of the Class II gaming system or an external system that securely maintains records of vouchers and coupons; validates payment of vouchers; records successful or failed payments of vouchers and coupons; and controls the purging of expired vouchers and coupons.

§ 543.3 How do I comply with this part?

(a) *Compliance based upon tier.*

[Reserved]

(b) *Determination of tier.* [Reserved]

(c) *Tribal internal control standards.* Within six months of [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], each tribal gaming regulatory authority shall, in accordance with the tribal gaming ordinance, establish or ensure that tribal internal control standards are established and implemented that shall:

(1) Provide a level of control that equals or exceeds those set forth in this part;

(2) Contain standards for currency transaction reporting that comply with 31 CFR part 103; and

(3) Establish a deadline, which shall not exceed six months from the date the tribal gaming regulatory authority establishes internal controls by which a gaming operation must come into compliance with the tribal internal control standards. However, the tribal gaming regulatory authority may extend the deadline by an additional six months if written notice citing justification is provided to the Commission no later than two weeks before the expiration of the nine month period.

(d) *Gaming operations.* Each gaming operation shall develop and implement an internal control system that, at a minimum, complies with the tribal internal control standards.

(1) *Existing gaming operations.* All gaming operations that are operating on or before [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], shall comply with this part within the time requirements established in paragraph (c) of this section. In the interim, such operations shall continue to comply with existing tribal internal control standards.

(2) *New gaming operations.* All gaming operations that commence operations after [INSERT DATE SIX MONTHS FROM DATE OF PUBICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], shall comply with this part before commencement of operations.

(e) *Submission to Commission.* Tribal regulations promulgated pursuant to this part shall not be required to be submitted to the Commission pursuant to § 522.3(b) of this chapter.

(f) *CPA testing.* (1) An independent certified public accountant (CPA) shall be engaged to perform ''Agreed-Upon Procedures'' to verify that the gaming operation is in compliance with the minimum internal control standards (MICS) set forth in this part or a tribally approved variance thereto that has received Commission concurrence. The CPA shall report each event and procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy the minimum standards or tribally approved variance that has received Commission concurrence. The ''Agreed-Upon Procedures'' may be performed in conjunction with the annual audit. The CPA shall report his or her findings to the tribe, tribal gaming regulatory authority, and management. The tribe shall submit two copies of the report to the Commission within 120 days of the gaming operation's fiscal year end. This regulation is intended to communicate the Commission's position on the minimum Agreed-Upon Procedures to be performed by the CPA. Throughout these regulations, the CPA's engagement and reporting are based on Statements on Standards for Attestation Engagements (SSAE's) in effect as of December 31, 2003, specifically SSAE 10 (''Revision and Recodification Agreed-Upon Procedures Engagements''). If future revisions are made to the SSAE's or new SSAE's are adopted that are applicable to this type of engagement, the CPA is to comply with any new or revised professional standards in conducting engagements pursuant to these regulations and the issuance of the agreed-upon procedures report. The CPA shall perform the ''Agreed-Upon Procedures'' in accordance with the following:

(i) As a prerequisite to the evaluation of the gaming operation's internal control systems, it is recommended that the CPA obtain and review an organization chart depicting segregation of functions and responsibilities, a description of the duties and responsibilities of each position shown on the organization chart, and an accurate, detailed narrative description of the gaming operation's procedures in effect that demonstrate compliance.

(ii) Complete the CPA NIGC MICS Compliance checklists or other comparable testing procedures. The checklists should measure compliance on a sampling basis by performing inspections, observations and substantive testing. The CPA shall complete separate checklists for bingo and information technology. All questions on each applicable checklist should be completed. Work-paper references are suggested for all ''no'' responses for the results obtained during testing (unless a note in the ''W/P Ref'' can explain the exception).

(iii) The CPA shall perform, at a minimum, the following procedures in conjunction with the completion of the checklists:

(A) At least one unannounced observation of each of the following: financial instrument acceptor drop and count. The AICPA's ''Audits of Casinos'' Audit and Accounting Guide provides that observations in the casino cage and count room should be unannounced. For purposes of these procedures, ''unannounced'' means that no officers, directors, or employees are given advance information regarding the dates or times of such observations. The independent accountant should make arrangements with the gaming operation and tribal gaming regulatory authority to ensure proper identification of the CPA's personnel and to provide for their prompt access to the count rooms. The checklists should provide for drop and count observations. The count room should not be entered until the count is in process and the CPA should not leave the room until the monies have been counted and verified to the count sheet by the CPA and accepted into accountability.

(B) Observations of the gaming operation's agents as they perform their duties.

(C) Interviews with the gaming operation's agents who perform the relevant procedures.

(D) Compliance testing of various documents relevant to the procedures. The scope of such testing should be indicated on the checklist where applicable.

(E) For new gaming operations that have been in operation for three months or less at the end of their business year, performance of this regulation, this section, is not required for the partial period.

(2) Alternatively, at the discretion of the tribe, the tribe may engage an independent CPA to perform the testing, observations and procedures reflected in paragraphs (f)(1)(i), (ii), and (iii) of this section utilizing the tribal internal control standards adopted by the tribal gaming regulatory authority or tribally approved variance that has received Commission concurrence. Accordingly, the CPA will verify compliance by the gaming operation with the tribal internal control standards. Should the tribe elect this alternative, as a prerequisite, the CPA will perform the following:

(i) The CPA shall compare the tribal internal control standards to the MICS to ascertain whether the criteria set forth in the MICS or Commission approved variances are adequately addressed.

(ii) The CPA may utilize personnel of the tribal gaming regulatory authority to cross-reference the tribal internal control standards to the MICS, provided the CPA performs a review of the tribal gaming regulatory authority personnel's work and assumes complete

responsibility for the proper completion of the work product.

(iii) The CPA shall report each procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy paragraph (f)(2)(i) of this section.

(3) *Reliance on Internal Auditors.* (i) The CPA may rely on the work of an internal auditor, to the extent allowed by the professional standards, for the performance of the recommended procedures specified in paragraphs (f)(1)(iii)(B), (C), and (D) of this section, and for the completion of the checklists as they relate to the procedures covered therein.

(ii) Agreed-upon procedures are to be performed by the CPA to determine that the internal audit procedures performed for a past 12-month period (includes two six month periods) encompassing a portion or all of the most recent business year have been properly completed. The CPA will apply the following agreed-upon procedures to the gaming operation's written assertion:

(A) Obtain internal audit department work-papers completed for a 12-month period (includes two six month periods) encompassing a portion or all of the most recent business year and determine whether the CPA NIGC MICS Compliance Checklists or other comparable testing procedures were included in the internal audit work-papers and all steps described in the checklists were initialed or signed by an internal audit representative.

(B) For the internal audit work-papers obtained in paragraph (f)(3)(ii)(A) of this section, on a sample basis, re-perform the procedures included in CPA NIGC MICS Compliance Checklists or other comparable testing procedures prepared by internal audit and determine if all instances of noncompliance noted in the sample were documented as such by internal audit. The CPA NIGC MICS Compliance Checklists or other comparable testing procedures for the applicable Drop and Count procedures are not included in the sample re-performance of procedures because the CPA is required to perform the drop and count observations as required under paragraph (f)(1)(iii)(A) of this section of the agreed-upon procedures. The CPA's sample should comprise a minimum of three percent of the procedures required in each CPA NIGC MICS Compliance Checklist or other comparable testing procedures for the bingo department and five percent for the other departments completed by internal audit in compliance with the internal audit MICS. The re-performance of procedures is performed as follows:

(1) For inquiries, the CPA should either speak with the same individual or an individual of the same job position as the internal auditor did for the procedure indicated in the CPA checklist.

(2) For observations, the CPA should observe the same process as the internal auditor did for the procedure as indicated in their checklist.

(3) For document testing, the CPA should look at the same original document as tested by the internal auditor for the procedure as indicated in their checklist. The CPA need only retest the minimum sample size required in the checklist.

(C) The CPA is to investigate and document any differences between their re-performance results and the internal audit results.

(D) Documentation shall be maintained for five years by the CPA indicating the procedures re-performed along with the results.

(E) When performing the procedures for paragraph (f)(3)(ii)(B) of this section in subsequent years, the CPA must select a different sample so that the CPA will re-perform substantially all of the procedures after several years.

(F) Additional procedures performed at the request of the Commission, the tribal gaming regulatory authority or management should be included in the Agreed-Upon Procedures report transmitted to the Commission.

(4) *Report Format.* The NIGC has concluded that the performance of these procedures is an attestation engagement in which the CPA applies such Agreed-Upon Procedures to the gaming operation's assertion that it is in compliance with the MICS and, if applicable under paragraph (f)(2) of this section, the tribal internal control standards and approved variances, provide a level of control that equals or exceeds that of the MICS. Accordingly, the Statements on Standards for Attestation Engagements (SSAE's), specifically SSAE 10, issued by the Auditing Standards Board is applicable. SSAE 10 provides current, pertinent guidance regarding agreed-upon procedure engagements, and the sample report formats included within those standards should be used, as appropriate, in the preparation of the CPA's agreed-upon procedures report. If future revisions are made to this standard or new SSAE's are adopted that are applicable to this type of engagement, the CPA is to comply with any revised professional standards in issuing their agreed upon procedures report. The Commission will provide an example report and letter formats upon request that may be used and contain all of the information discussed below. The report must describe all instances of procedural noncompliance (regardless of materiality) with the MICS or approved variations, and all instances where the tribal gaming regulatory authority's regulations do not comply with the MICS. When describing the agreed-upon procedures performed, the CPA should also indicate whether procedures performed by other individuals were utilized to substitute for the procedures required to be performed by the CPA. For each instance of noncompliance noted in the CPA's agreed-upon procedures report, the following information must be included: The citation of the applicable MICS for which the instance of noncompliance was noted; a narrative description of the noncompliance, including the number of exceptions and sample size tested.

(5) *Report Submission Requirements.* (i) The CPA shall prepare a report of the findings for the tribe and management. The tribe shall submit two copies of the report to the Commission no later than 120 days after the gaming operation's business year end. This report should be provided in addition to any other reports required to be submitted to the Commission.

(ii) The CPA should maintain the work-papers supporting the report for a minimum of five years. Digital storage is acceptable. The Commission may request access to these work-papers, through the tribe.

(6) *CPA NIGC MICS Compliance Checklists.* In connection with the CPA testing pursuant to this section and as referenced therein, the Commission will provide CPA MICS Compliance Checklists upon request.

(g) *Enforcement of Commission Minimum Internal Control Standards.* (1) Each tribal gaming regulatory authority is required to establish and implement internal control standards pursuant to paragraph (c) of this section. Each gaming operation is then required, pursuant to paragraph (d) of this section, to develop and implement an internal control system that complies with the tribal internal control standards. Failure to do so may subject the tribal operator of the gaming operation, or the management contractor, to penalties under 25 U.S.C. 2713.

(2) Recognizing that tribes are the primary regulator of their gaming operation(s), enforcement action by the Commission will not be initiated under this part without first informing the tribe and tribal gaming regulatory authority of deficiencies in the internal controls of its gaming operation and

allowing a reasonable period of time to address such deficiencies. Such prior notice and opportunity for corrective action is not required where the threat to the integrity of the gaming operation is immediate and severe.

§§ 543.4–543.5 [Reserved]

§ 543.6 Does this part apply to small and charitable gaming operations?

(a) *Small gaming operations.* This part shall not apply to small gaming operations provided that:

(1) The tribal gaming regulatory authority permits the operation to be exempt from this part;

(2) The annual gross gaming revenue of the operation does not exceed $1 million; and

(3) The tribal gaming regulatory authority develops and the operation complies with alternate procedures that:

(i) Protect the integrity of games offered;

(ii) Safeguard the assets used in connection with the operation; and

(iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

(b) *Charitable gaming operations.* This part shall not apply to charitable gaming operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(3) The charitable gaming operation is operated wholly by the charitable organization's agents;

(4) The annual gross gaming revenue of the charitable operation does not exceed $1 million; and

(5) The tribal gaming regulatory authority develops and the charitable gaming operation complies with alternate procedures that:

(i) Protect the integrity of the games offered;

(ii) Safeguard the assets used in connection with the gaming operation; and

(iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

(c) *Independent operators.* Nothing in this section shall exempt gaming operations conducted by independent operators for the benefit of a charitable organization.

§ 543.7 What are the minimum internal control standards for bingo?

(a) *Bingo Cards*—(1) *Inventory of bingo paper.* (i) The bingo paper inventory shall be controlled so as to assure the integrity of the bingo paper being used as follows:

(A) When received, bingo paper shall be inventoried and secured by an authorized agent(s) independent of bingo sales;

(B) The issue of bingo paper to the cashiers shall be documented and signed for by the authorized agent(s) responsible for inventory control and a cashier. The bingo control log shall include the series number of the bingo paper;

(C) The bingo control log shall be utilized by the gaming operation to verify the integrity of the bingo paper being used; and

(D) Once each month, an authorized agent(s) independent of both bingo paper sales and bingo paper inventory control shall verify the accuracy of the ending balance in the bingo control log by reconciling it with the bingo paper inventory.

(ii) Paragraph (a)(1) of this section does not apply where no physical inventory is applicable.

(2) *Bingo Sales.* (i) There shall be an accurate accounting of all bingo sales.

(ii) All bingo sales records shall include the following information:

(A) Date;

(B) Time;

(C) Shift or session;

(D) Sales transaction identifiers, which may be the unique card identifier(s) sold or when electronic bingo card faces are sold, the unique identifiers of the card faces sold;

(E) Quantity of bingo cards sold;

(F) Dollar amount of bingo sales;

(G) Signature, initials, or identification of the agent or device who conducted the bingo sales; and

(H) When bingo sales are recorded manually, total sales are verified by an authorized agent independent of the bingo sales being verified and the signature, initials, or identification of the authorized agent who verified the bingo sales is recorded.

(iii) No person shall have unrestricted access to modify bingo sales records.

(iv) An authorized agent independent of the seller shall perform the following standards for each seller at the end of each session:

(A) Reconcile the documented total dollar amount of cards sold to the documented quantity of cards sold;

(B) Note any variances; and

(C) Appropriately investigate any noted variances with the results of the follow-up documented.

(3) *Voiding bingo cards.* (i) Procedures shall be established and implemented to prevent the voiding of card sales after the start of the calling of the game for which the bingo card was sold. Cards may not be voided after the start of a game for which the card was sold.

(ii) When a bingo card must be voided the following controls shall apply as relevant:

(A) A non-electronic bingo card shall be marked void; and

(B) The authorization of the void, by an authorized agent independent of the original sale transaction (supervisor recommended), shall be recorded either by signature on the bingo card or by electronically associating the void authorization to the sale transaction of the voided bingo card.

(4) *Re-issue of previously sold bingo cards.* When one or more previously sold bingo cards need to be reissued, the following controls shall apply: the original sale of the bingo cards must be verified; and the reissue of the bingo cards must be documented, including the identity of the agent authorizing re-issuance.

(b) Draw—(1) *Verification and display.* (i) Procedures shall be established and implemented to ensure the identity of each object drawn is accurately recorded and transmitted to the participants. The procedures must identify the method used to ensure the identity of each object drawn.

(ii) For all games offering a prize payout of $1,200 or more, as the objects are drawn the identity of the objects shall be immediately recorded and maintained for a minimum of 24 hours.

(iii) Controls shall be present to assure that all objects eligible for the draw are available to be drawn prior to the next draw.

(c) *Manual Payouts and Short Pays.* (1) Procedures shall be established and implemented to prevent unauthorized access or fraudulent transactions using manual payout documents, including:

(i) Payout documents shall be controlled and completed in a manner that is intended to prevent a custodian of funds from altering the dollar amount on all parts of the payout document subsequent to the manual payout and misappropriating the funds.

(ii) Payout documents shall be controlled and completed in a manner that deters any one individual from initiating and producing a fraudulent payout document, obtaining the funds, forging signatures on the payout document, routing all parts of the document, and misappropriating the funds. Recommended procedures of this standard include but are not limited to the following:

(A) Funds are issued either to a second verifier of the manual payout (i.e., someone other than the agents who generated/requested the payout) or to two agents concurrently (i.e., the generator/requestor of the document

and the verifier of the manual payout). Both witness the manual payout; or

(B) The routing of one part of the completed document is under the physical control (e.g., dropped in a locked box) of an agent other than the agent that obtained/issued the funds and the agent that obtained/issued the funds must not be able to place the document in the locked box.

(iii) *Segregation of responsibilities.* The functions of sales and prize payout verification shall be segregated, if performed manually. Agents who sell bingo cards on the floor shall not verify bingo cards for prize payouts with bingo cards in their possession of the same type as the bingo card being verified for the game. Floor clerks who sell bingo cards on the floor are permitted to announce the identifiers of winning bingo cards.

(iv) *Validation.* Procedures shall be established and implemented to determine the validity of the claim prior to the payment of a prize (i.e., bingo card was sold for the game played, not voided, etc.) by at least two persons.

(v) *Verification.* Procedures shall be established and implemented to ensure that at least two persons verify the winning pattern has been achieved on the winning card prior to the payment of a prize.

(vi) *Authorization and Signatures.* (A) A Class II gaming system may substitute as one authorization/signature verifying, validating or authorizing a winning card of less than $1,200 or other manual payout. Where a Class II gaming system substitutes as an authorization/signature, the manual payout is subject to the limitations provided in this section.

(B) For manual prize payouts of $1,200 or more and less than a predetermined amount not to exceed $50,000, at least two agents must authorize, sign and witness the manual prize payout.

(1) Manual prize payouts over a predetermined amount not to exceed $50,000 shall require one of the two signatures and verifications to be a supervisory or management employee independent of the operation of bingo.

(2) This predetermined amount, not to exceed $50,000, shall be authorized by management, approved by the tribal gaming regulatory authority, documented, and maintained.

(2) Documentation, including;

(i) Manual payouts and short-pays exceeding $10 shall be documented on a two-part form, of which a restricted system record can be considered one part of the form, and documentation shall include the following information:

(A) Date and time;

(B) Player interface identifier or game identifier;

(C) Dollar amount paid (both alpha and numeric) or description of personal property awarded, including fair market value. Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) Type of manual payout (e.g., Prize payout, external bonus payout, short pay, etc.);

(E) Game outcome (e.g., patterns, symbols, bingo card identifier/description, etc.) for manual prize payouts, external bonus description, reason for short pay, etc.;

(F) Preprinted or concurrently printed sequential manual payout identifier; and

(G) Signatures or other authorizations, as required by this part.

(ii) For short-pays of $10 or less, the documentation (single-part form or log is acceptable) shall include the following information:

(A) Date and time;

(B) Player interface number;

(C) Dollar amount paid (both alpha and numeric). Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) The signature of at least one agent verifying and witnessing the short pay; and

(E) Reason for short pay.

(iii) In other situations that allow an agent to input a prize payout or change the dollar amount of the prize payout by more than $1 in a Class II gaming system that has an automated prize payout component, two agents, one of which is a supervisory employee, must be physically involved in verifying and witnessing the prize payout.

(iv) For manually paid promotional prize payouts, as a result of the play of a game and where the amount paid is not included in the prize schedule, the documentation (single-part form or log is acceptable) shall include the following information:

(A) Date and time;

(B) Player interface number;

(C) Dollar amount paid (both alpha and numeric). Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) The signature of at least one agent verifying and witnessing the manual promotional prize payout of $599 or less and two agents verifying and witnessing the manual promotional prize payout exceeding $599;

(E) Description or name of the promotion; and

(F) Total amount of manual promotional prize payouts shall be recorded by shift, session or other relevant time period.

(v) When a controlled manual payout document is voided, the agent completing the void shall clearly mark ''void'' across the face of the document, sign across the face of the document and all parts of the document shall be retained for accountability.

(d) *Operational controls.* (1) Procedures shall be established and implemented with the intent to prevent unauthorized access to or fraudulent transactions involving cash or cash equivalents.

(2) Cash or cash equivalents exchanged between two persons shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or if applicable each session. Unexplained variances shall be documented and maintained. Unverified transfers of cash or cash equivalents are prohibited.

(3) Procedures shall be established and implemented to control cash or cash equivalents in accordance with this section and based on the amount of the transaction. These procedures include but are not limited to, counting and recording on an accountability form by shift, session or relevant time period the following:

(i) Inventory, including any increases or decreases;

(ii) Transfers;

(iii) Exchanges, including acknowledging signatures or initials; and

(iv) Resulting variances.

(4) Any change of control of accountability, exchange or transfer shall require the cash or cash equivalents be counted and recorded independently by at least two persons and reconciled to the recorded amount.

(e) *Gaming equipment.* (1) Procedures shall be established and implemented with the intention to restrict access to agents for the following:

(i) Controlled gaming equipment/components (e.g., draw objects, and back-up draw objects); and

(ii) Random number generator software. (Additional information technology security standards can be found in § 543.16 of this part)

(2) The critical proprietary software components of a Class II gaming system will be identified in the test laboratory report. When initially received, the software shall be verified to be authentic copies, as certified by the independent testing laboratory.

(3) Procedures shall be established relating to the periodic inspection, maintenance, testing, and documentation of a random sampling of gaming equipment/components, including but not limited to:

(i) Software related to game outcome shall be authenticated semi-annually by an agent independent of bingo operations by comparing signatures against the test laboratory letter on file with the tribal gaming regulatory authority for that version.

(ii) Class II gaming system interfaces to external systems shall be tested annually for accurate communications and appropriate logging of events.

(4) Records shall be maintained for each player interface that indicate the date the player interface was placed into service or made available for play, the date the player interface was removed from service and not available for play, and any changes in player interface identifiers.

(f) *Voucher systems.* (1) The voucher system shall be utilized to verify the authenticity of each voucher or coupon redeemed.

(2) If the voucher is valid, the patron is paid the appropriate amount.

(3) Procedures shall be established and implemented to document the payment of a claim on a voucher that is not physically available or a voucher that cannot be validated (e.g., mutilated, expired, lost, stolen, etc.).

(i) If paid, appropriate documentation is retained for reconciliation purposes.

(ii) Payment of a voucher for $50 or more, a supervisory employee shall review the applicable voucher system, player interface or other transaction history records to verify the validity of the voucher and initial the voucher or documentation prior to payment.

(4) Vouchers redeemed shall remain in the cashier's accountability for reconciliation purposes. The voucher redemption system reports shall be used to ensure all paid vouchers have been validated.

(5) Vouchers paid during a period while the voucher system is temporarily out of operation shall be marked ''paid'', initialed and dated by the cashier. If the voucher is greater than a predetermined amount approved (not to exceed $500), a supervisory employee shall approve the payment and evidence that approval by initialing the voucher prior to payment.

(6) Paid vouchers are maintained in the cashier's accountability for reconciliation purposes.

(7) Upon restored operation of the voucher system, vouchers redeemed while the voucher system was temporarily out of operation shall be validated as expeditiously as possible.

(8) Unredeemed vouchers can only be voided in the voucher system by supervisory employees. The supervisory employee completing the void shall clearly mark ''void'' across the face of the voucher and sign across the face of the voucher, if available. The accounting department will maintain the voided voucher, if available.

(g) *Patron accounts and cashless systems.* (1) All smart cards (i.e., cards that possess the means to electronically store or retrieve data) that maintain the only source of account data are prohibited.

(2) For patron deposit accounts the following standards shall apply:

(i) For each patron deposit account, an agent shall:

(A) Require the patron to personally appear at the gaming operation;

(B) Record the type of identification credential examined, the credential number, the expiration date of credential, and the date credential was examined. (Note: A patron's driver's license is the preferred method for verifying the patron's identity. A passport, non-resident alien identification card, other government issued identification credential or another picture identification credential normally acceptable as a means of identification when cashing checks, may also be used.);

(C) Record the patron's name and may include another identifier (e.g., nickname, title, etc.) of the patron, if requested by patron;

(D) Record a unique identity for each patron deposit account;

(E) Record the date the account was opened; and

(F) Provide the account holder with a secure method of access to the account.

(ii) Patron deposit accounts shall be established for patrons at designated areas of accountability and the creation of the account must meet all the controls of paragraph (g)(2)(i) of this section when the patron makes an initial deposit of cash or cash equivalents.

(iii) If patron deposit account adjustments may be made by the operation, the operation must be authorized by the account holder to make necessary adjustments. This requirement can be met through the collection of a single authorization that covers the life of the patron deposit account.

(iv) *Patron deposits & withdrawals.* (A) Prior to the patron making a withdrawal from a patron deposit account, the cashier shall verify the identity of the patron and availability of funds. Reliance on a secured Personal Identification Number (PIN) entered by the patron is an acceptable method of verifying patron identity.

(B) A multi-part deposit/withdrawal record shall be created when the transaction is processed by a cashier, including;

(1) Same document number on all copies;

(2) Type of transaction, deposit or withdrawal;

(3) Name or other identifier of the patron;

(4) At least the last four digits of the account identifier;

(5) Patron signature for withdrawals, unless a secured PIN is utilized by the patron;

(6) Date of transaction;

(7) Dollar amount of transaction;

(8) Nature of deposit or withdrawal (e.g., cash, check, chips); and

(9) Signature of the cashier processing the transaction.

(C) A copy of the transaction record shall be secured for reconciliation of the cashier's bank for each shift. All transactions involving patron deposit accounts shall be accurately tracked.

(D) The copy of the transaction record shall be forwarded to the accounting department at the end of the gaming day.

(E) When a cashier is not involved in the deposit/withdrawal of funds, procedures shall be established that safeguard the integrity of the process used.

(v) *Patron Deposit Account Adjustments.* (A) Adjustments to the patron deposit accounts shall be performed by an agent.

(B) A record shall be created when the transaction is processed, including;

(1) Unique transaction identifier;

(2) Type of transaction, adjustment;

(3) Name or other identifier of the patron;

(4) At least the last four digits of the account identifier;

(5) Date of transaction;

(6) Dollar amount of transaction;

(7) Reason for the adjustment; and

(8) Signature or unique identifier for the agent who made the adjustment.

(C) The transaction record shall be forwarded to the accounting department at the end of the gaming day.

(vi) Where available, systems reports that indicate the dollar amount of transactions for patron deposit accounts (e.g., deposits, withdrawals, account adjustments, etc.) that should be reflected in each cashier's accountability shall be utilized at the conclusion of each shift in the reconciling of funds.

(vii) Cashless transactions and electronic funds transfers to and from patron deposit accounts shall be recorded and maintained at the end of the gaming operations specified 24-hour accounting period.

(viii) Procedures shall be established to maintain a detailed record for each

patron deposit account that includes the dollar amount of all funds deposited and withdrawn, account adjustments made, and the transfers to or from player interfaces.

(ix) Detailed patron deposit account transaction records shall be available to the patron upon reasonable request and to the tribal gaming regulatory authority upon request.

(x) Only dedicated gaming operation bank accounts shall be used to record electronic funds transfers to or from the patron deposit accounts. Gaming operation bank accounts dedicated to electronic funds transfers to or from the patron deposit accounts shall not be used for any other types of transactions.

(3) For promotional and other accounts the following standards shall apply:

(i) Changes to promotional and other accounts shall be performed by an agent.

(ii) The following standards apply if a player tracking system is utilized:

(A) In the absence of the patron, modifications to balances on a promotional or other account must be made under the authorization of supervisory employees and shall be sufficiently documented (including substantiation of reasons for modification). Modifications are randomly verified by independent agents on a quarterly basis. This standard does not apply to the deletion of balances related to inactive or closed accounts through an automated process.

(B) Access to inactive or closed accounts is restricted to supervisory employees.

(C) Patron identification is required when redeeming values. Reliance on a secured Personal Identification Number (PIN) by the patron is an acceptable method of verifying patron identification.

(h) *Promotions.* (1) The conditions for participating in promotional programs, including drawings and giveaway programs shall be approved and available for patron review at the gaming operation.

(2) Changes to the player tracking systems, promotional accounts, promotion and external bonusing system parameters which control features such as the awarding of bonuses, the issuance of cashable credits, non-cashable credits, coupons and vouchers, shall be performed under the authority of supervisory employees, independent of the department initiating the change. Alternatively, the changes may be performed by supervisory employees of the department initiating the change if sufficient documentation is generated and the propriety of the changes are randomly verified by supervisory employees independent of the department initiating the change on a monthly basis.

(3) All other changes to the player tracking system shall be appropriately documented.

(4) All relevant controls from § 543.16 of this part will apply.

(i) *Accounting.* (1) *Accounting/audit standards.* (i) Accounting/auditing procedures shall be performed by agents who are independent of the persons who performed the transactions being reviewed.

(ii) All accounting/audit procedures and actions shall be documented (e.g., log, checklist, investigations and notation on reports), maintained for inspection and provided to the tribal gaming regulatory authority upon request.

(ii) Accounting/audit procedures shall be performed reviewing transactions for relevant accounting periods, including a 24-hour accounting period and reconciled in total for those time periods.

(iv) Accounting/audit procedures shall be performed within seven days of the transaction's occurrence date being reviewed.

(v) Accounting/audit procedures shall be in place to review variances related to bingo accounting data, which shall include at a minimum any variance noted by the Class II gaming system for cashless transactions in and out, electronic funds transfer in and out, external bonus payouts, vouchers out and coupon promotion out.

(vi) At least monthly, an accounting/audit agent shall confirm that the appropriate investigation has been completed for the review of variances.

(2) Audit tasks to be performed for each day's business.

(i) Records of bingo card sales shall be reviewed for proper authorization, completion and accurate calculations.

(ii) Manual payout summary report, if applicable, shall be reviewed for proper authorizations, completion, accurate calculations, and authorization confirming manual payout summary report totals.

(iii) A random sampling of records of manual payouts shall be reviewed for proper authorizations and completion for manual payouts less than $1,200.

(iv) Records of all manual prize payouts of $1,200 or more shall be reviewed for proper authorizations and completion.

(v) Where manual payout information is available per player interface, records of manual payouts shall be reviewed against the recorded manual payout amounts per player interface.

(vi) Manual payout forms shall be reconciled to each cashier's accountability documents and in total for each relevant period (e.g., session, shift, day, etc.).

(vii) Records of voided manual payouts shall be reviewed for proper authorization and completion.

(viii) Records of voided bingo cards shall be reviewed for proper authorization and completion.

(ix) Use of controlled forms shall be reviewed to ensure each form is accounted for.

(x) Where bingo sales are available per player interface, bingo sales shall be reviewed for reasonableness.

(xi) Amount of financial instruments accepted per financial instrument type and per financial instrument acceptor shall be reviewed for reasonableness, to include but not limited to zero amounts.

(xii) Where total prize payouts are available per player interface, total prize payouts shall be reviewed for reasonableness.

(xiii) Amount of financial instruments dispensed per financial instrument type and per financial instrument dispenser shall be reviewed for reasonableness, to include but not limited to zero amounts.

(xiv) For a random sampling, foot the vouchers redeemed and trace the totals to the totals recorded in the voucher system and to the amount recorded in the applicable cashier's accountability document.

(xv) Daily exception information provided by systems used in the operation of bingo shall be reviewed for propriety of transactions and unusual occurrences.

(xvi) Ensure promotional coupons which are not financial instruments are properly cancelled to prevent improper recirculation.

(xvii) Reconcile all parts of the form used to document transfers that increase/decrease the inventory of an accountability (includes booths and any other accountability areas).

(xviii) Reconcile voucher liability (e.g.,
issued − voided − redeemed − expired = unpaid) to the voucher system records.

(xix) The total of all patron deposit accounts shall be reconciled, as follows:

(A) A report shall be generated that details each day's beginning and ending balance of patron deposit accounts, adjustments to patron deposit accounts, and all patron deposit account transactions.

(B) Reconcile the beginning and ending balances to the summary of manual deposit/withdrawal and account adjustment documentation to the patron deposit account report.

(xx) Reconcile each day's patron deposit account liability (e.g., deposits +/ − adjustments − withdrawals = total account balance) to the system records.

(xxi) Reconcile electronic funds transfers to the cashless system records, the records of the outside entity which processed the transactions and the operations dedicated cashless account bank records.

(xxii) Accounting data used in performance analysis may only be altered to correct amounts that were determined to be in error. When correcting accounting data, the correct amount shall be indicated in any Class II gaming system exception reports generated.

(xxiii) Accounting/auditing agents shall reconcile the audited bingo totals report to the audited bingo accounting data for each day.

(xxiv) Accounting/auditing agents shall ensure each day's bingo accounting data used in performance reports has been audited and reconciled.

(xxv) If the Class II gaming system produces exception reports they shall be reviewed on a daily basis for propriety of transactions and unusual occurrences.

(3) Audit tasks to be performed at relevant periods:

(i) Financial instrument acceptor data shall be recorded immediately prior to or subsequent to a financial instrument acceptor drop. The financial instrument acceptor amount-in data must be recorded at least weekly. The time between recordings may extend beyond one week in order for a recording to coincide with the end of an accounting period only if such extension is for no longer than six additional days.

(ii) When a player interface is removed from the floor, the financial instrument acceptor contents shall be protected to prevent the misappropriation of stored funds.

(iii) When a player interface is permanently removed from the floor, the financial instrument acceptor contents shall be counted and recorded.

(iv) For currency interface systems, accounting/auditing agents shall make appropriate comparisons of system generated count as recorded in the statistical report at least one drop period per month. Discrepancies shall be resolved prior to generation/distribution of reports.

(v) For each drop period, accounting/auditing agents shall compare the amount-in per financial instrument accepted by the financial instrument acceptors to the drop amount counted for the period. Discrepancies shall be resolved before the generation/distribution of statistical reports.

(vi) Investigation shall be performed for any one player interface having an unresolved drop variance in excess of an amount that is both more than $25 and at least three percent (3%) of the actual drop. The investigation performed and results of the investigation shall be documented, maintained for inspection, and provided to the tribal gaming regulatory authority upon request.

(vii) The results of variance investigations, including the date and personnel involved in the investigations, will be documented in the appropriate report and retained. The results will also include any corrective action taken (e.g., accounting data storage component replaced, interface component repaired, software debugged, etc.). The investigation will be completed and the results documented within seven days of the day the variance was noted, unless otherwise justified.

(viii) Procedures shall be established and implemented to perform the following on a regular basis, at a minimum of monthly, and using predetermined thresholds:

(A) Where the Class II gaming system is capable of providing information per player interface, identify and investigate player interfaces with total prize payouts exceeding bingo sales;

(B) Where bingo sales is available per player interface, investigate any percentage of increase/decrease exceeding a predetermined threshold, not to exceed 20%, in total bingo sales as compared to a similar period of time that represents consistency in prior performance.

(C) Investigate any exception noted in paragraphs (i)(3)(viii)(A) and (B) of this section and document the findings. The investigation may include procedures to review one or more of the following:

(1) Verify days on floor are comparable.

(2) Non-prize payouts for authenticity and propriety.

(3) Player interface out of service periods.

(4) Unusual fluctuations in manual payouts.

(D) If the investigation does not identify an explanation for exceptions then a physical check procedure shall be performed, as required by paragraph (i)(3)(viii)(E) of this section.

(E) Document any investigation of unresolved exceptions using a predefined player interface physical check procedure and checklist, to include a minimum of the following as applicable:

(1) Verify game software;

(2) Verify player interface configurations;

(3) Test amount in accounting data for accuracy upon insertion of financial instruments into the financial instrument acceptor;

(4) Test amount out accounting data for accuracy upon dispensing of financial instruments from the financial instrument dispenser;

(5) Record findings and repairs or modifications made to resolve malfunctions, including date and time, player interface identifier and signature of the agent performing the player interface physical check, and additional signatures as required; and

(6) Maintain player interface physical check records, either in physical or electronic form, for the period prescribed by the procedure.

(ix) For Class II gaming systems, procedures shall be performed at least monthly to verify that the system accounting data is accurate.

(x) For Tier C, at least weekly:

(A) Financial instruments accepted at a kiosk shall be removed and counted by at least two agents; and

(B) Kiosk transactions shall be reconciled to the beginning and ending balances for each kiosk.

(xi) At the conclusion of a promotion, accounting/audit agents shall perform procedures (e.g., interviews, review of payout documentation, etc.) to ensure that promotional prize payouts, drawings, and giveaway programs are conducted in accordance with the rules provided to the patrons.

(4) *Inter-tribal prize pools.* Procedures shall be established and implemented to govern the participation in inter-tribal prize pools, which at a minimum shall include the review, verification and maintenance of the following records, which shall be made available, within a reasonable time of the request, to the tribal gaming regulatory authority upon request:

(i) Summary of contributions in total made to an inter-tribal prize pool;

(ii) Summary of disbursements in total from an inter-tribal prize pool; and

(iii) Summary of inter-tribal prize pool funds availability.

(5) *Performance Analysis.* (i) Bingo performance data shall be recorded at the end of the gaming operations specified 24-hour accounting period. Such data shall include:

(A) Amount-in and amount-out for each Class II gaming system.

(B) The total value of all financial instruments accepted by the Class II gaming system by each financial instrument acceptor and by each financial instrument type.

(C) The total value of all financial instruments dispensed by the Class II

gaming system and by each financial instrument type.

(D) The total value of all manual payouts by each Class II gaming system.

(E) The total value of bingo purchases for each Class II gaming system.

(F) The total value of prizes paid for each Class II gaming system.

(ii) Procedures shall be established and implemented that ensure the reliability of the performance data.

(iii) Upon receipt of the summary of the data, the accounting department shall review it for reasonableness using pre-established parameters defined by the gaming operation.

(iv) An agent shall record and maintain all required data before and after any maintenance or modifications that involves the clearing of the data (e.g., system software upgrades, data storage media replacement, etc.). The information recorded shall be used when reviewing performance reports to ensure that the maintenance or modifications did not improperly affect the data in the reports.

(6) *Statistical reporting.* (i) The bingo sales, prize payouts, bingo win, and actual bingo win percentages shall be recorded for:

(A) Each shift or session;

(B) Each day;

(C) Month-to-date; and

(D) Year-to-date or fiscal year-to-date.

(ii) A monthly comparison for reasonableness shall be made of the amount of bingo paper sold from the bingo paper control log to the amount of bingo paper sales revenue recognized.

(iii) Management employees independent of the bingo department shall review bingo statistical information on at least a monthly basis.

(iv) Agents independent of the bingo department shall investigate any large or unusual statistical fluctuations, as defined by the gaming operation.

(v) Such investigations shall be documented, maintained for inspection, and provided to the tribal gaming regulatory authority upon request.

(vi) The actual bingo win percentages used in the statistical reports should not include operating expenses (e.g., a percentage payment to administrators of inter-tribal prize pools), promotional prize payouts or bonus payouts not included in the prize schedule.

(7) *Progressive prize pools.* (i) A display that shows the amount of the progressive prize shall be conspicuously displayed at or near the player interface(s) to which the prize applies.

(ii) At least once each day, each gaming operation shall record the total amount of each progressive prize pool offered at the gaming operation on the progressive log.

(iii) When a manual payment for a progressive prize is made from a progressive prize pool, the amount shall be recorded on the progressive log.

(iv) Each gaming operation shall record, on the progressive log, the base reset amount of each progressive prize the gaming operation offers.

(v) Procedures shall be established and implemented specific to the transfer of progressive amounts in excess of the base reset amount to other awards or prizes. Such procedures may also include other methods of distribution that accrue to the benefit of the gaming public.

§§ 543.8–543.15 [Reserved]

§ 543.16 What are the minimum internal controls for information technology?

(a) Physical security measures restricting access to agents, including vendors, shall exist over the servers, including computer terminals, storage media, software and data files to prevent unauthorized access and loss of integrity of data and processing.

(b) Unauthorized individuals shall be precluded from having access to the secured computer area(s).

(c) *User controls.* (1) Computer systems, including application software, shall be secured through the use of passwords or other approved means.

(2) Procedures shall be established and implemented to ensure that management or independent agents assign and control access to computer system functions.

(3) Passwords shall be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user shall have his or her own individual user identification and password.

(ii) When an individual has multiple user profiles, only one user profile per application may be used at a time.

(iii) Passwords must be changed at least quarterly with changes documented. Documentation is not required if the system prompts users to change passwords and then denies access if the change is not completed.

(iv) The system must be updated to change the status of terminated users from active to inactive status within 72 hours of termination.

(v) At least quarterly, independent agents shall review user access records for appropriate assignment of access and to ensure that terminated users do not have access to system functions.

(vi) Documentation of the quarterly user access review shall be maintained.

(vii) System exception information (e.g., changes to system parameters, corrections, overrides, voids, etc.) must be maintained.

(4) Procedures shall be established and implemented to ensure access listings are maintained which include at a minimum:

(i) User name or identification number (or equivalent); and

(ii) Listing of functions the user can perform or equivalent means of identifying same.

(d) Adequate backup and recovery procedures shall be in place that include:

(1) *Daily backup of data files*—(i) *Backup of all programs.* Backup of programs is not required if the program can be reinstalled.

(ii) Secured storage of all backup data files and programs, or other adequate protection to prevent the permanent loss of any data.

(iii) Backup data files and programs may be stored in a secured manner in another building that is physically separated from the building where the system's hardware and software are located. They may also be stored in the same building as the hardware/software as long as they are secured in a fireproof safe or some other manner that will ensure the safety of the files and programs in the event of a fire or other disaster.

(2) Recovery procedures shall be tested on a sample basis at least annually with documentation of results.

(e) *Access records.* (1) Procedures must be established to ensure computer access records, if capable of being generated by the computer system, are reviewed for propriety for the following at a minimum:

(i) Class II gaming systems;

(ii) Accounting/auditing systems;

(iii) Cashless systems;

(iv) Voucher systems;

(v) Player tracking systems; and

(vi) External bonusing systems.

(2) If the computer system cannot deny access after a predetermined number of consecutive unsuccessful attempts to log on, the system shall record unsuccessful log on attempts.

(f) *Remote access controls.* (1) For computer systems that can be accessed remotely, the written system of internal controls must specifically address remote access procedures including, at a minimum:

(i) Record the application remotely accessed, authorized user's name and business address and version number, if applicable;

(ii) Require approved secured connection;

(iii) The procedures used in establishing and using passwords to allow authorized users to access the computer system through remote access;

(iv) The agents involved and procedures performed to enable the

physical connection to the computer system when the authorized user requires access to the system through remote access; and

(v) The agents involved and procedures performed to ensure the remote access connection is disconnected when the remote access is no longer required.

(2) In the event of remote access, the information technology employees shall prepare a complete record of the access to include:

(i) Name or identifier of the employee authorizing access;

(ii) Name or identifier of the authorized user accessing system;

(iii) Date, time, and duration of access; and

(iv) Description of work performed in adequate detail to include the old and new version numbers, if applicable of any software that was modified, and details regarding any other changes made to the system.

Dated: October 17, 2007.

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Commissioner.

Cloyce V. Choney,

Commissioner.

[FR Doc. E7–20778 Filed 10–23–07; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 547

RIN 3141–AA29

Technical Standards for Electronic, Computer, or Other Technologic Aids Used in the Play of Class II Games

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would add a new part to the Commission's regulations establishing technical standards for Class II games—bingo, lotto, other games similar to bingo, pull tabs, or ''instant bingo''—that are played using ''electronic, computer, or other technologic aids.'' The proposed rule would also establish a process for ensuring the integrity of such games and aids before their placement in a Class II tribal gaming operation. No such standards currently exist. The Commission proposes this action in order to assist tribal gaming regulatory authorities and operators in ensuring the integrity and security of Class II games and the accountability of gaming revenue.

DATES: Submit comments on or before December 10, 2007.

ADDRESSES: Mail comments to ''Comments on Technical Standards,'' National Indian Gaming Commission, 1441 L Street, NW., Washington, DC 20005, Attn: Michael Gross, Associate General Counsel, General Law. Comments may be transmitted by facsimile to 202–632–7066, but the original also must be mailed or submitted to the above address. Comments may be sent electronically, instead of by mail or fax, to *technical_standards@nigc.gov*. Please indicate ''Class II technical regulations'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Michael Gross, Associate General Counsel, General Law, Office of General Counsel, telephone: 202.632.7003. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (''IGRA''), enacted by the Congress in 1988, establishes the National Indian Gaming Commission (''NIGC'' or ''Commission'') and sets out a comprehensive framework for the regulation of gaming on Indian lands. IGRA establishes three classes of Indian gaming.

''Class I gaming'' means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.

''Class II gaming'' means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, as well as various non-house-banked card games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming are banking card games such as blackjack, electronic or electromechanical facsimiles of any game of chance, and slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. Indian tribes can engage in Class II gaming without any state involvement.

''Class III gaming'' includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including lotteries and most forms of casino gaming, such as slot machines, roulette, and banking card games like blackjack. Class III gaming may be conducted lawfully only if the tribe and the state in which the tribe is located enter into a tribal-state compact for such gaming. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior. Because of the compact requirement, states, Indian tribes, and the NIGC possess regulatory authority over Class III gaming. In addition, the United States Department of Justice possesses exclusive criminal, and certain civil, jurisdiction over Class III gaming on Indian lands.

The Commission has determined that it is in the best interests of Indian gaming to adopt technical standards that govern the implementation of electronic, computer, and other technologic aids used in the play of Class II games because no such standards currently exist. The technical standards seek to provide a means for tribal gaming regulatory authorities and tribal operators to ensure that the integrity of Class II games played with the use of electronic, computer, or other technologic aids is maintained; that the games and aids are secure; and that the games and aids are fully auditable, *i.e.* that they provide a means for the gaming authority and gaming operation to account for all gaming revenue.

Development of the Proposed Rule

The development of the proposed rule began formally with the March 31, 2004, appointment of an advisory committee comprised of tribal government representatives with substantial experience and expertise in gaming regulation and operations, the Commission, and Commission staff. Although the Commission initially intended to develop one set of regulations, this committee's work ultimately resulted in the Commission's publication of a proposed rule for Class II classification standards, 71 FR 30238 (May 25, 2006), and a separate proposed rule for Class II technical standards, 71 FR 46336 (August 11, 2006). A detailed history of the advisory committee's work on the technical standards to that point, its meetings, the Commission's consultations with Indian tribes, and the contributions and participation of the interested general public is published in the preamble to that proposed rule. 71 FR 46336–46337.

The ultimate goal of that first set of technical standards was as it is here—to ensure the security and integrity of Class II games played with technologic aids and to ensure the auditability of the gaming revenue that those games earn.

It was also the intention of that first set of technical standards to allow for flexibility in the implementation of technology and not to prohibit the use of future technologies unforeseen and as yet undeveloped.

Given the importance of the regulations to the industry, the Commission, which had initially set a comment period of 45 days, reopened the comment period for an additional 76 days, from November 15, 2006, through January 31, 2007. 71 FR 71115 (December 8, 2006); 71 FR 76618 (December 21, 2006).

Public comments made it clear to the Commission that the first set of proposed technical standards fell short of its goal of technological flexibility. In particular, commenters stated that the first set of proposed technical standards would mandate particular implementations of technology and that some of those were not practical or feasible. Commenters suggested that rather than prescribe particular implementations of technology, the standards should describe the regulatory outcomes that the Commission desires and leave it to the manufacturers to develop ways of meeting those regulatory requirements.

At a December 5, 2006, advisory committee meeting in Washington, DC, the tribal representatives to the advisory committee strongly seconded this sentiment. The details of the solution, however, were not immediately apparent. Before providing further advice to the Commission, the tribal representatives wished to consult further with other tribal representatives and regulators, and with industry representatives. They therefore suggested that they assemble a working group made up of representatives from the Class II gaming industry—tribal operators, tribal regulators, and manufacturers alike—to assist it. Accepting the fundamental premise that the technical standards ought to be descriptive rather than prescriptive, the Commission agreed to allow the tribal representatives to work independently of the Commission to redraft the technical standards. Subsequently, the Commission withdrew the first proposed technical standards. 72 FR 7360 (February 15, 2007).

The tribal representatives to the advisory committee formed a working group, which met at various times, in person and telephonically, from the end of 2006 through the middle of 2007 to draft this new set of technical standards. The Commission did not participate in the establishment of this working group. On some occasions, the tribal representatives invited the participation of Commission staff members to answer questions and to provide explanation about the Commission's regulatory goals. Commission staff participated in this capacity during in-person meetings on December 11–12, 2006, in Las Vegas, Nevada, and June 5, 2007, in Dallas, Texas.

The full advisory committee, including the Commission, met to discuss drafts of proposed technical standards on February 22, 2007, in Albuquerque, New Mexico, April 26, 2007, in Seattle, Washington, and May 22, 2007, in Bloomington, Minnesota. All of these meetings were open to the interested public.

The Commission is immensely grateful to the tribal representatives on the advisory committee and to those who assisted the tribal representatives for all of their hard work and for the high-quality draft regulations that resulted from their efforts. The proposed rule is largely adopted from the final draft of descriptive technical standards, which was delivered to the Commission by the tribal representatives to the advisory committee on June 18, 2006.

There are places, of course, where the Commission felt it could not accept the draft's recommendations and has proposed rules more stringent than the tribal representatives to the advisory committee would have preferred. One such area of disagreement concerns the recall and tracking of alternative displays.

It is a common practice for bingo games played using electronic player stations to provide alternative display of game results above and beyond the numbers marked and patterns obtained on a bingo card. Most frequently, these alternative displays take the form of spinning reels such as one would find on slot machines. A winning bingo pattern, for example, might also be displayed as a winning combination of symbols on the reels. The Commission regards such alternative displays as perfectly permissible, provided that it is the bingo game, and not the spinning reels, that determine the player's results.

The technical standards require a last game recall function to be able to display alternative results as well as the actual game results, if a Class II gaming system has a last game recall. The tribal representatives to the advisory committee have said that they regard the requirement as both unnecessary, since the alternative displays do not determine game results, and beyond the scope of the Commission's authority.

The Commission, however, regards recall of alternative displays as an important part of safeguarding the integrity of gaming, notwithstanding the fact that alternate displays do not determine, and are not relevant to, the outcome of the game. The fact remains, however, that the alternative displays are the source of many patron disputes, and providing for their automatic recall provides to tribal gaming regulatory authorities information essential to resolving such disputes quickly, completely, and fairly. Over and above this, it is the Commission's understanding that many manufacturers already include alternative displays in their recall functions, or could easily do so.

Purpose and Scope

The proposed part 547 applies to all Class II games played using electronic, computer, or other technologic aids, or modifications of such games and aids. Class II games played through such technologic aids are widely used in Indian gaming operations, yet no uniform standards exist to govern their implementation. The proposed rule seeks to remedy that absence and create a regulatory structure under which tribal gaming regulatory authorities and tribal operators are able to ensure the integrity and security of Class II games played with the use of electronic, computer, or other technologic aids and the auditability of gaming revenue.

There is a great variety in the technologic aids used in the play of Class II games and, therefore, a great variety in the means used to play the games. An operation may, for example, play bingo using no aids at all. A caller may select numbers using ping pong balls taken from a hopper, and players purchase paper cards from an employee of the operation and mark them with an inked dauber. Alternatively, numbers may be selected randomly using an electronic random number generator, which in turn displays the selected number on a display board. Instead of paper, players may use electronic handheld devices to monitor and mark their cards. The handheld devices are purchased and have cards loaded on them at a point-of-sale retail terminal.

Still again, bingo may be implemented electronically on client-server architectures. A common arrangement, but by no means the only one possible, is to have client machines on the casino floor as electronic player stations. These display bingo cards, allow the players to cover numbers when drawn, and pay any prizes won. The server, usually located off the floor, draws random numbers and passes them along data communications lines to the client machines for game play. Credits may be placed on the electronic player station by inserting cash or

electronically drawing down an account separately established.

The challenge, then, for writing technical standards is to address all of the various ways that Class II games can be played. Central to the proposed rule, therefore, is the definition of ''Class II gaming system,'' which refers to any given collection of components used in the play of a II game: ''All components, whether or not technologic aids in electronic, computer, mechanical or other technologic form, that function together to aid the play of one or more Class II games, including accounting functions mandated by these regulations.'' The notion of the ''gaming system'' thus encompasses bingo played in all of the implementations described above.

It is the ''gaming system'' that must meet the technical standards of the proposed part 547. Like the gaming system itself, the standards are conceived generally so that they may be met by a gaming system, regardless of the particular components that may comprise it. For example, the proposed rule does not refer to ''bill validators,'' an electronic device into which a patron may insert a bill in order to place credits on a gaming machine. Instead, proposed part 547 describes ''financial instrument acceptors'' and the standards they must meet. ''Financial instrument acceptor'' is broad enough in meaning to encompass not only ''bill validator'' but also a cash drawer staffed by an employee of the gaming operation. Proposed part 547 provides minimum standards for the security of the ''acceptors'' and of the money or vouchers (generally, ''financial instruments'') they accept.

Further, because of the breadth of possible implementations for Class II gaming systems, proposed part 547 requires that gaming equipment and software used with Class II gaming systems meet the requirements of the part, but only those that are applicable to the system as implemented. This is, in short, a rule of construction of common sense. For example, if a system takes only cash and lacks the ability to print or accept vouchers, then any standards that apply to vouchers do not apply.

All of that said, the proposed rule deliberately provides only minimum standards. Tribes and tribal gaming regulatory authorities may add any additional requirements, or more stringent requirements, needed to suit their particular circumstances.

In order to ensure compliance with the technical standards, the proposed rule borrows from the established practices of tribal, state, and provincial gaming jurisdictions across North America. The proposed rule establishes, as a necessary prerequisite to a gaming system being offered to the public for play in a Class II gaming operation, review of the system by a qualified, independent testing laboratory and approval by the tribal gaming regulatory authority.

Under the proposed rule, a tribe's gaming regulatory authority will require all Class II gaming systems, or modifications thereof, to be submitted to a testing laboratory for review and analysis. That submission includes a working prototype of the gaming system or modification, all pertinent software, and anything else the testing laboratory needs for its complete and thorough review. In turn, the laboratory will review whether the gaming system does or does not meet the requirements of the rule, as well as any additional requirements adopted by the tribe's gaming regulatory authority. The laboratory will provide a written report of its analysis and conclusions to the tribal gaming regulatory authority for approval or disapproval of the gaming system or modification. The tribal gaming regulatory authority will retain the report as long as the gaming system or modification in question remains available to the public for play.

The Commission understands that existing Class II gaming systems likely do not meet all of the requirements of the proposed rule. In order to avoid the potentially significant economic and practical consequences of requiring immediate compliance, the proposed rule implements a five-year ''grandfather period'' for existing gaming systems.

Existing gaming systems may be grandfathered and exempt from compliance with all of the requirements of the proposed rule if they are put through a similar review by a qualified independent testing laboratory and approved by a tribal gaming regulatory authority. Specifically, in order to be eligible for grandfathering, a gaming system must be submitted to a testing laboratory within 120 days of the proposed part 547 becoming final. The testing laboratory must review the gaming system for compliance with a specific, minimum set of requirements—random number generation, no reflexive or secondary decision-making after random numbers are drawn, the inability to change bingo cards during the play of a game, and a mechanism for verifying game software. The laboratory must issue a report on these issues to the tribal gaming regulatory authority, which must make a finding that the gaming system qualifies for grandfather status. Once a gaming system is qualified, the manufacturer must label each player interface on the system with its date of manufacture and certify the same to the tribal gaming regulatory authority. This requirement effectively freezes the number of grandfathered interfaces in use.

This is not to say, however, that grandfathered gaming systems must remain entirely static. Tribal gaming regulatory authorities may permit modifications to gaming system software or hardware that increases compliance with the requirements of proposed part 547, even if the modifications do not make the system wholly compliant. Tribal gaming regulatory authorities may also authorize modifications to gaming system software that does not detract from, compromise, or prejudice the proper functioning, security or integrity of the Class II gaming system and the system's overall compliance with the requirements of proposed part 547. Changes such as new pay tables, new game themes, and new alternative displays fall within this latter category.

Finally, the Commission does not intend for proposed part 547 to stand alone. The advisory committee pointed out, and the Commission agrees, that many of the functions placed in the technical standards proposed on August 11, 2006, and now withdrawn, are more properly characterized as minimum internal control standards for a gaming operation. Accordingly, the Commission is simultaneously publishing, as a separate proposed rule, a set of minimum internal control standards for the play of bingo that is intended to be applied in conjunction with the standards set forth in this proposed rule. In short, game manufacturers and tribal gaming regulators must look to both sets of rules for applicable standards for the construction and operation of Class II gaming systems.

The Commission intends as well that these two parts be applied in conjunction with a third proposed rule, also published simultaneously, governing the classification of bingo and pull tabs and distinguishing these Class II games played with technological aids from Class III facsimiles of games of chance. References in the proposed part 547 to ''minimum internal control standards'' and ''classification standards'' refer to these two other sets of rules.

Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

It is not entirely clear whether the proposed rule, considered separately and apart from the Commission's proposed part 546, ''Classification Standards for Bingo * * * Using 'Electronic, Computer, or Other Technologic Aids','' is a major rule under 5 U.S.C. 804.2, the Small Business Regulatory Enforcement Fairness Act. The NIGC has commissioned an economic impact study of the two proposals taken together. The study makes clear that the cost to the Indian gaming industry of complying with the two proposed rules will have an annual effect on the economy of $100 million or more, at least for the first 5 years after adoption. Accordingly, the Commission treats the proposed rule as a major rule. The economic impact study is available for review at the Commission's Web site, *http://www.nigc.gov,* or by request using the addresses or telephone numbers, above.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 658(1); 1502(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission's Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule requires information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is subject to review by the Office of Management and Budget. The title, description, and respondent categories are discussed below, together with an estimate of the annual information collection burden.

With respect to the following collections of information, the Commission invites comments on: (1) Whether the proposed collections of information are necessary for proper performance of its functions, including whether the information would have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Process for Certification of Electronic, Computer, or other Technologic Aids used in the play of Class II games and process for qualification of independent testing laboratories, proposed 25 CFR 547.4.

Summary of information and description of need: This provision in the proposed rule establishes a process for ensuring that electronic, computer, or other technologic aids used with the play of Class II gaming systems have been reviewed and evaluated by a qualified, independent testing laboratory prior to their approval by a tribal gaming regulatory authority and their placement on the floor in a Class II tribal gaming operation. The process helps to ensure the proper functioning of the equipment and the integrity, fairness, and auditability of games played.

The process requires a tribe's gaming regulatory authority to require that all Class II gaming systems, or modifications thereto, be submitted to a qualified, independent testing laboratory for review and analysis. That submission includes a working prototype of the game and aid, all pertinent software, and complete documentation and descriptions of all functions and components. In turn, the laboratory will determine that the gaming system does or does not meet the requirements of the rule and any additional requirements adopted by the tribe's gaming regulatory authority. The laboratory will provide a written report of its analysis and conclusions to the tribal gaming regulatory authority for its approval or disapproval of the gaming system or modification. The tribal gaming regulatory authority will retain the laboratory report as long as the gaming system or modification remains available to the public for play.

This process is necessary to ensure the security and integrity of Class II gaming. Technical standards such as those in the proposed rule are a fundamental part of Class III gaming and of non-Indian casino gaming throughout North America. No uniform standards exist for Class II gaming, however. The implementation of such standards will assist tribal gaming regulators in ensuring that games are implemented fairly, that all technologic aids are secure and function properly, and that the games and aids allow the tribe and the operator to properly account for gaming revenue.

This provision in the proposed rule also contemplates an analogous process for determining whether a Class II gaming system is eligible for the five-year grandfather period made available by the proposed rule. This process again requires a tribe's gaming regulatory authority to require that a Class II gaming system be submitted, within 120 days after the effective date of part 547, to a qualified, independent testing laboratory for review and analysis. The submission must include a working prototype of the game and aid, all pertinent software, and complete documentation and descriptions of all functions and components. In turn, the laboratory will determine that the gaming system does or does not meet a small set of certain specified requirements of the proposed rule. The laboratory will provide a written report of its analysis and conclusions to the tribal gaming regulatory authority for its finding that the gaming system is or is not eligible for grandfather status. Upon a finding of eligibility, the tribal gaming regulatory authority will issue a certificate to that effect to the gaming system manufacturer and a description of the grandfathered game to the Commission.

This process is necessary to ensure a certain minimum integrity and security for games while at the same time avoiding potentially significant economic and practical consequences of requiring immediate and complete compliance with the standards of the proposed rule.

Finally, the proposed rule establishes a process for testing laboratories to apply for eligibility to provide testing services under the proposed rule. The testing laboratories must submit to suitability determinations made by the tribes they serve, and these determinations include criminal background checks for the laboratories'

principals. These determinations are made according to the same standards used to license the primary management officials and key employees of Indian gaming operations under the Indian Gaming Regulatory Act. All of this requires the submission by the laboratory of corporate financial information; qualifications of the engineering staff; information (and inspections) of the available engineering facilities, and personal information for principals, including tax returns, bankruptcies and law suits, work histories and references.

Given the essential role accorded to laboratories in ensuring the integrity, security, and auditability of Class II games, this process is essential to ensuring the competence, integrity, and independence of the testing laboratories and the suitability of their decision makers, *i.e.* to ensure that undesirable elements are kept out of gaming.

Respondents: The respondents are independent testing laboratories, developers and manufacturers of Class II gaming systems, and Indian tribes. The Commission estimates that there are currently 20 such manufacturers, 5 such laboratories, and 226 gaming tribes. The frequency of responses to the information collection requirement will vary.

Information Collection Burden: In order to qualify under the grandfather provisions of the proposed rule, a gaming system must be submitted to a testing laboratory for review and analysis during the first 120 days after the effective date of the final rule. The Commission estimates that there are approximately 25 Class II gaming systems in existence and that all will be submitted during this period.

Following the initial 120-day period, the frequency of submissions of new gaming systems or of modifications to existing gaming systems will be entirely market driven. The Commission anticipates approximately a 20% turnover each year for the five-year grandfather period. Consequently, there should be approximately five submissions of new gaming systems each year.

Submissions of modifications are, as a matter of course, a more common practice. Software in particular commonly goes through many iterations in development and continues to be improved and revised even after sale and placement on a gaming operation's floor. That said, the submission of modifications tends to be sporadic, with less frequent or occasional submissions punctuated by fairly steady periods of submissions when new systems or modifications are introduced. The NIGC anticipates there will be approximately 300 submissions of modifications and thus 300 reports produced by testing laboratories each year following the 120-day period that begins with the effective date of the final rule.

The preparation and submission of supporting documentation by manufacturers or a tribal gaming operation (as opposed to gaming system hardware and software per se) is an information collection burden under the Paperwork Reduction Act, as is the preparation of reports by the test laboratories or the preparation of a grandfather certificate and explanation of gaming system by a tribal gaming regulatory authority.

It is the existing practice in the gaming industry, both Indian and non-Indian alike, for the game manufacturer to submit a gaming system to a testing laboratory for review and analysis. The proposed rule leaves open the possibility that a tribal gaming regulatory authority may require the management of a gaming operation to make a required submission. The Commission anticipates, however, that it will be the responsibility of the gaming system manufacturers to make the submissions to testing laboratories.

The amount of documentation submitted by a manufacturer as part of a submission of a gaming system and the size of a laboratory report is a function of the complexity of the gaming system submitted for review. Submission for minor modifications of software or hardware that a manufacturer has already submitted and that a laboratory has previously examined will be a matter of little time both for manufacturer and laboratory, while the submission and review of an entirely new game platform will be time consuming. The provision of a grandfather certificate and a description of a gaming systems component are small matters as that information can be taken directly from a testing laboratory's report.

The practice of submission and review set out in the proposed rule, however, is not new. It is already part of the regulatory requirements in tribal, state, and Canadian provincial gaming jurisdictions throughout North America. Manufacturers already have significant compliance personnel and infrastructure in place, and the very existence of private, independent laboratories is due to these requirements.

Accordingly, based upon the discussions with leading testing laboratories and with manufacturers for the Indian gaming and non-Indian gaming markets, the NIGC estimates that gathering and preparing documentation for a submission of a single, complete gaming system will require, on average, 8 hours for manufacturer's employee. Following examination and analysis, NIGC estimates that writing a report for a complete gaming system will require, on average, 10 hours of a laboratory engineer's time. For the submission of modifications to a gaming system, NIGC estimates 4 hours for a manufacturer's employee. For the report on a modification, NIGC estimates 5 hours for a laboratory engineer.

Thus, the information collection requirements will be a 200-hour burden on manufacturers industry-wide during the first 120 days after the final rule becomes effective and a 1200-hour burden industry-wide thereafter. The information collection requirements will be a 250-hour burden on laboratories for the grandfather submissions made during the first 120 days and a 1500-hour burden thereafter.

Next, the Commission anticipates that tribal gaming regulatory authorities will issue grandfather certificates to manufacturers and send a description of grandfathered systems to the Commission for all of the approximately 25 existing gaming systems. The preparation of these certificates and descriptions will be a small matter as all of the necessary information is contained in the testing laboratory reports and will take no more than 0.5 hours to prepare.

Finally, the proposed rule requires tribal gaming regulatory authorities to maintain laboratory reports as long as the game system or modification at issue is available for play. This, however, is a ministerial function that involves little more than filing, and occasionally retrieving, the report. As this is already common practice among tribal gaming regulatory authorities, the Commission estimates that 0.1 hours per report will be dedicated to these tasks.

The following table summarizes the annual hour burden:

Provision	Respondents	No. of respondents	Collections, 1st 120 days	Hours per collection	Total annual hours	Collections, day 121 forward, per annum	Hours per collection	Total annual hours
25 CFR 547.4	Laboratories	5	25	10	250	300	5	1500
25 CFR 547.4	Manufacturers.	20	25	8	200	300	4	1200
25 CFR 547.4	Tribal Gaming Operations.	226	0	0	0	0	0	0
25 CFR	Tribal Gaming regulatory Authorities.	226	25	.5	12.5	300	0.1	30

The proposed rule also requires a determination of suitability for each of the approximately 5 testing laboratories. The information required can be substantial: Corporate financial information; qualifications of the engineering staff; information (and inspections) of the engineering facilities available, and personal information for principals, including tax returns, bankruptcies and lawsuits, work histories and references.

However, the 5 existing testing laboratories have already collected and provided this information—multiple times—in order to be licensed in Tribal and non-Tribal gaming jurisdictions nationwide. The Commission estimates that the re-submission of such information would take the necessary laboratory employees 20 hours to accomplish once. As the gaming tribes typically use only one gaming laboratory, the submission of suitability determinations to 226 tribal gaming regulatory authorities would total 4,520 hours.

The Commission believes, however, that the hour burden is not likely to be this high. The proposed rule permits a tribal gaming regulatory authority to rely upon a suitability determination already made by another gaming jurisdiction in the United States, rather than require a new suitability determination for a testing laboratory. The existing testing laboratories are already licensed in numerous jurisdictions throughout the United States, and the Commission believes that approximately 90%—203 of 226—of the tribal gaming authorities will accept existing suitability determinations from other jurisdictions. The submission by a testing lab of an existing suitability determination amounts to the writing of a letter. The NIGC estimates that the submission of such letters will take the necessary laboratory employees 0.5 hours to accomplish once. As each of the gaming tribes typically uses only one gaming laboratory, the submission of suitability determinations of up to 203 tribal gaming authorities would total 101.5 hours. For the remaining 10% or 23 tribal gaming regulatory authorities, the submission burden on laboratories is 20 hours per tribe or 460 hours. If every tribe requires annual re-licensing, the subsequent annual hours burden on the 5 laboratories is 561.5 hours.

Comments: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3507(d), the Commission has submitted a copy of this proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding the burden, estimates, or any other aspect of the information collection, including suggestions for reducing the burden (1) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for National Indian Gaming Commission, 725 17th St., NW., Washington DC, 20503, and (2) to Michael Gross, Associate General Counsel, General Law, National Indian Gaming Commission, 1441 L Street, NW., Washington DC 20005.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq*).

List of Subjects in 25 CFR Part 547

Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Commission proposes to amend 25 CFR Chapter III by adding part 547 to read as follows:

PART 547—MINIMUM TECHNICAL STANDARDS FOR GAMING EQUIPMENT USED WITH THE PLAY OF CLASS II GAMES.

Sec.

547.1 What is the purpose of this part?
547.2 How do these regulations affect State jurisdiction?
547.3 What are the definitions for this part?
547.4 How do I comply with this part?
547.5 What are the rules of interpretation and of general application for this part?
547.6 What are the minimum technical standards for enrolling and enabling Class II gaming system components?
547.7 What are the minimum technical hardware standards applicable to Class II gaming systems?
547.8 What are the minimum technical software standards applicable to Class II gaming systems?
547.9 What are the minimum technical standards for Class II gaming system accounting functions?
547.10 What are the minimum standards for Class II gaming system critical events?
547.11 What are the minimum technical standards for money and credit handling?
547.12 What are the minimum technical standards for downloading on a Class II gaming system?
547.13 What are the minimum technical standards for program storage media?
547.14 What are the minimum technical standards for electronic random number generation?
547.15 What are the minimum technical standards for electronic data communications between system components?
547.16 What are the minimum standards for game artwork, glass, and rules?
547.17 How does a gaming operation apply for a variance from these standards?

Authority: 25 U.S.C. 2706(b).

§ 547.1 What is the purpose of this part?

The Indian Gaming Regulatory Act, 25 U.S.C. 2703(7)(A)(i), permits the use of electronic, computer, or other technologic aids in connection with the play of Class II games. This part establishes the minimum technical standards governing the use of such aids.

§ 547.2 How do these regulations affect State jurisdiction?

Nothing in this part shall be construed to grant to a State jurisdiction in Class II gaming or to extend a State's jurisdiction in Class III gaming.

§ 547.3 What are the definitions for this part?

For the purposes of this part, the following definitions apply:

Account Access Component, a component within a Class II gaming system that reads or recognizes account access media and gives a patron the ability to interact with their account.

Account Access Medium, a magnetic stripe card or any other medium inserted into, or otherwise made to interact with, an account access component in order to give a patron the ability to interact with an account.

Audit Mode, the mode where it is possible to view Class II gaming system accounting functions, statistics, etc. and perform non-player related functions.

Agent, an employee or other person authorized by the gaming operation, as approved and licensed by the tribal gaming regulatory authority, designated for certain decisions, tasks and actions in the gaming operation.

Cancel Credit, an action initiated by the Class II gaming system where some or all of a player's credits are removed by an attendant and paid to the player.

Cashless System, a system that performs cashless transactions and maintains records of those cashless transactions.

Cashless Transaction, a movement of funds electronically from one component to another, often to or from a patron deposit account.

CD–ROM, Compact Disc—Read Only Memory.

Chairman, the Chairman of the National Indian Gaming Commission established by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*

Class II Game, the same as ''class II gaming'' in 25 U.S.C. 2703(7)(A).

Class II Gaming System, all components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games, including accounting functions mandated by these regulations.

Commission, the National Indian Gaming Commission.

Coupon, a financial instrument of fixed wagering value, usually paper, that can only be used to acquire non-cashable credits through interaction with a voucher system. This does not include instruments such as printed advertising material that cannot be validated directly by a voucher system.

Critical Memory, memory locations storing data essential to the functionality of the Class II gaming system.

DLL, a Dynamic-Link Library file.

Download Package, approved data sent to a component of a Class II gaming system for such purposes as changing the component software.

DVD, Digital Video Disk or Digital Versatile Disk.

Electromagnetic Interference, the physical characteristic of an electronic component to emit electronic noise either into free air, onto the power lines, or onto communication cables.

Electrostatic Discharge, a single-event, rapid transfer of electrostatic charge between two objects, usually resulting when two objects at different potentials come into direct contact with each other.

EPROM, Erasable Programmable Read Only Memory—a storage area that may be filled with data and information, that once written is not modifiable, and that is retained even if there is no power applied to the machine.

Fault, an event that when detected by a Class II gaming system causes a discontinuance of game play or other component functions.

Financial Instrument, any tangible item of value tendered in Class II game play, including, but not limited to, bills, coins, vouchers and coupons.

Financial Instrument Acceptor, any component that accepts financial instruments.

Financial Instrument Dispenser, any component that dispenses financial instruments.

Financial Instrument Storage Component, any component that stores financial instruments.

Flash Memory, non-volatile memory that retains its data when the power is turned off and that can be electronically erased and reprogrammed without being removed from the circuit board.

Game Software, the operational program or programs that govern the play, display of results, and/or awarding of prizes or credits for Class II games.

Gaming Equipment, all electronic, electro-mechanical, mechanical, or other physical components utilized in the play of Class II games.

Hardware, gaming equipment.

Interruption, any form of mis-operation, component failure, or interference to the Class II gaming equipment.

Modification, a revision to any hardware or software used in a Class II gaming system.

Non-cashable credit, credits given by an operator to a patron; placed on a Class II gaming system through a coupon, cashless transaction or other approved means; and capable of activating play but not being converted to cash.

Patron Deposit Account, an account maintained on behalf of a patron, for the purpose of depositing and withdrawing cashable funds for the primary purpose of interacting with a gaming activity.

Player Interface, any component or components of a Class II gaming system, including an electronic or technologic aid (not limited to terminals, player stations, handhelds, fixed units, etc.), that directly enables player interaction in a Class II game.

Prize Schedule, the set of prizes available to players for achieving pre-designated patterns in the Class II game.

Program Storage Media, an electronic data storage component, such as a CD-ROM. EPROM, hard disk, or flash memory on which software is stored and from which software is read.

Progressive Prize, a prize that increases by a selectable or predefined amount based on play of a Class II game.

Random Number Generator (RNG), a software module, hardware component or combination of these designed to produce outputs that are effectively random.

Reflexive Software, any software that has the ability to manipulate and/or replace a randomly generated outcome for the purpose of changing the results of a Class II game.

Removable/Rewritable storage media, program or data storage components that can be removed from gaming equipment and be written to, or rewritten by, the gaming equipment or by other equipment designed for that purpose.

Server, a computer which controls one or more applications or environments within a Class II gaming system.

Test/Diagnostics Mode, a mode on a component that allows various tests to be performed on the Class II gaming system hardware and software.

Testing Laboratory, an organization recognized by a tribal gaming regulatory authority pursuant to § 547.4(f).

Tribal Gaming Regulatory Authority, the entity authorized by tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

Voucher, a financial instrument of fixed wagering value, usually paper, that can only be used to acquire an equivalent value of cashable credits or cash through interaction with a voucher system.

Voucher System, a component of the Class II gaming system or an external system that securely maintains records of vouchers and coupons; validates

payment of vouchers; records successful or failed payments of vouchers and coupons; and controls the purging of expired vouchers and coupons.

§ 547.4 How do I comply with this part?

(a) *Limited immediate compliance.* By 120 days after the effective date of this part, a tribal gaming regulatory authority shall:

(1) Require that all Class II gaming system software that affects the play of the Class II game be submitted, together with the signature verification required by § 547.8(f), to a testing laboratory recognized pursuant to paragraph (f) of this section;

(2) Require that the testing laboratory test the submission to the standards established by § 547.8(b), § 547.14, the minimum probability standards of § 547.5(c), and to any additional standards adopted by the tribal gaming regulatory authority;

(3) Require that the testing laboratory provide the tribal gaming regulatory authority with a formal written report setting forth and certifying to the findings and conclusions of the test;

(4) Make a finding, in the form of a certificate provided to the supplier, that the Class II gaming system qualifies for grandfather status under the provisions of this section, but only upon receipt of a testing laboratory's report that the Class II gaming system is compliant with § 547.8(b), § 547.8(f), the minimum probability standards of § 547.5(c), § 547.14, and any other standards adopted by the tribal gaming regulatory authority. If the tribal gaming regulatory authority does not issue the certificate, or if the testing laboratory finds that the Class II gaming system is not compliant with § 547.8(b), § 547.8(f), the minimum probability standards of § 547.5(c), § 547.14, or any other standards adopted by the tribal gaming regulatory authority, then the gaming system shall immediately be removed from play and not be utilized.

(5) Retain a copy of any testing laboratory's report so long as the Class II gaming system that is the subject of the report remains available to the public for play;

(6) Retain a copy of any certificate of grandfather status so long as the Class II gaming system that is the subject of the certificate remains available to the public for play; and

(7) Require the supplier of any player interface to designate with a permanently affixed label each player interface with an identifying number and the date of manufacture or a statement that the date of manufacture was on or before the effective date of this part. The tribal gaming regulatory authority shall also require the supplier to provide a written declaration or affidavit affirming that the date of manufacture was on or before the effective date of this part.

(b) *Grandfather provisions.* All Class II gaming systems manufactured or placed in a tribal facility on or before the effective date of this part and certified pursuant to paragraph (a) of this section are grandfathered Class II gaming systems for which the following provisions apply:

(1) Grandfathered Class II gaming systems may continue in operation for a period of five years from the effective date of this part.

(2) Subject to the limitations in any applicable Commission regulations governing the classification of games, any grandfathered Class II gaming system shall be available for use at any tribal gaming facility subject to approval by the tribal gaming regulatory authority which shall transmit its notice of that approval, identifying the grandfathered components, to the NIGC.

(3) As permitted by the tribal gaming regulatory authority, individual hardware or software components may be repaired or replaced to ensure proper functioning, security, or integrity of the grandfathered Class II gaming system.

(4) All modifications that affect the play of a grandfathered Class II gaming system must be approved pursuant to paragraph (c) of this section, except for the following:

(i) Any software modifications that the tribal gaming regulatory authority finds will maintain or advance the system's overall compliance with this part or applicable provisions of Commission regulations governing minimum internal control standards, after receiving a new testing laboratory report that the modifications are compliant with the standards established by § 547.8(b), the minimum probability requirements of § 547.5(c), § 547.14, and any other standards adopted by the tribal gaming regulatory authority;

(ii) Any hardware modifications that the tribal gaming regulatory authority finds will maintain or advance the system's overall compliance with this part or applicable provisions of Commission regulations governing minimum internal control standards; and

(iii) Any other modification to the software of a grandfathered Class II gaming system that the tribal gaming regulatory authority finds will not detract from, compromise or prejudice:

(A) The proper functioning, security, or integrity of the Class II gaming system, and

(B) The gaming system's overall compliance with the requirements of this part or applicable provisions of Commission regulations governing minimum internal control standards.

(iv) No such modification may be implemented without the approval of the tribal gaming regulatory authority. The tribal gaming regulatory authority shall maintain a record of the modification so long as the Class II gaming system that is the subject of the modification remains available to the public for play and shall make the record available to the Commission upon request. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(c) *Submission, testing, and approval—generally.* Except as provided in paragraphs (b) and (d) of this section, no tribal gaming regulatory authority shall permit in a tribal gaming operation the use of any Class II gaming system, or any associated cashless system or voucher system or any modification thereto, unless:

(1) The Class II gaming system, cashless system, voucher payment system, or modification has been submitted to a testing laboratory;

(2) The testing laboratory tests the submission to the standards established by:

(i) This part;

(ii) Applicable provisions of Commission regulations governing the classification of games and minimum internal controls; and

(iii) The tribal gaming regulatory authority; and the testing laboratory provides a formal written report to the party making the submission, setting forth and certifying to its findings and conclusions; and

(3) Following receipt of the testing laboratory's report, the tribal gaming regulatory authority makes a finding that the Class II gaming system, cashless system, or voucher system conforms to the standards established by:

(i) This part;

(ii) Applicable provisions of Commission regulations governing the classification of games and minimum internal controls; and

(iii) The tribal gaming regulatory authority.

The tribal gaming regulatory authority shall retain a copy of the testing laboratory's report so long as the Class II gaming system, cashless system, voucher system, or modification thereto that is the subject of the report remains

available to the public for play in its gaming operation.

(d) *Emergency hardware and software changes.* (1) A tribal gaming regulatory authority, in its discretion, may permit modified hardware or game software to be made available for play without prior laboratory review if the modified hardware or game software is:

(i) Necessary to correct a problem affecting the fairness, security, or integrity of a game or accounting system or any cashless system, or voucher system; or

(ii) Unrelated to game play, an accounting system, a cashless system, or a voucher system.

(2) If a tribal gaming regulatory authority authorizes modified game software or hardware to be made available for play or use without prior laboratory review, the tribal gaming regulatory authority shall thereafter require the hardware or software manufacturer to:

(i) Immediately advise other users of the same hardware or software of the importance and availability of the update;

(ii) Immediately submit the new hardware or software to a testing laboratory for testing and verification of compliance with this part and any applicable provisions of Commission regulations governing minimum internal control standards; and

(iii) Immediately provide the tribal gaming regulatory authority with a software signature verification tool meeting the requirements of § 547.8(f) for any new software.

(3) If a tribal gaming regulatory authority authorizes software or hardware modification under this paragraph, it shall maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play and shall make the record available to the Commission upon request. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(e) *Compliance by charitable gaming operations.* This part shall not apply to charitable gaming operations, provided that:

(1) The tribal government determines that the organization sponsoring the gaming operation is a charitable organization;

(2) All proceeds of the charitable gaming operation are for the benefit of the charitable organization;

(3) The tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(4) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers; and

(5) The annual gross gaming revenue of the charitable gaming operation does not exceed $1,000,000.

(f) *Testing laboratories.* (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:

(i) The testing laboratory demonstrates its integrity, independence and financial stability to the tribal gaming regulatory authority.

(ii) The testing laboratory demonstrates its technical skill and capability to the tribal gaming regulatory authority.

(iii) The testing laboratory is not owned or operated by the tribe or tribal gaming regulatory authority.

(iv) The tribal gaming regulatory authority:

(A) Makes a suitability determination of the testing laboratories no less stringent than that required by § 533.6(b)(1)(ii) through (v) and 533.6(c) of this chapter and based upon no less information than that required by § 537.1 of this chapter, or

(B) Accepts, in its discretion, a determination of suitability for the testing laboratory made by any other gaming regulatory jurisdiction in the United States.

(v) After reviewing the suitability determination and the information provided by the testing laboratory, the tribal gaming regulatory authority determines that the testing laboratory is qualified to test and evaluate Class II gaming systems.

(2) The tribal gaming regulatory authority shall:

(i) Maintain a record of all determinations made pursuant to paragraphs (f)(1)(iv) and (f)(1)(v) of this section for a minimum of three years and shall make the records available to the Commission upon request. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(ii) Place the testing laboratory under a continuing obligation to notify it of any adverse regulatory action in any jurisdiction where the testing laboratory conducts business.

(iii) Require the testing laboratory to provide notice of any material changes to the information provided to the tribal gaming regulatory authority.

§ 547.5 What are the rules of interpretation and of general application for this part?

(a) *Minimum standards.* A tribal gaming regulatory authority may establish and implement additional technical standards that are as stringent as, or more stringent than, those set out in this part.

(b) *Only applicable standards apply.* Gaming equipment and software used with Class II gaming systems shall meet all applicable requirements of this part and applicable requirements of Commission regulations governing the classification of games and minimum internal controls. For example, if a Class II gaming system lacks the ability to print or accept vouchers, then any standards that govern vouchers do not apply.

(c) *Fairness.* No Class II gaming system shall cheat, mislead, or disadvantage users. All prizes advertised shall be available to win. No progressive prize shall have a probability of winning of less than 1 in 50,000,000. No other prize shall have a probability of winning of less than 1 in 25,000,000.

(d) *Approved equipment and software only.* All gaming equipment and software used with Class II gaming systems shall be identical in all respects to a prototype reviewed and tested by a testing laboratory and approved for use by the tribal gaming regulatory authority pursuant to § 547.4(a) through (c). Unapproved software shall not be loaded onto or stored on any program storage medium used in a Class II gaming system, except as provided in § 547.4(d).

(e) *Proper functioning.* All gaming equipment and software used with Class II gaming systems shall perform according to the manufacturer's design and operating specifications.

(f) *No Limitation of Technology.* This part should not be interpreted to limit the use of technology or to preclude the use of technology not specifically referenced.

(g) *Severability.* If any provision of this part is declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of this part.

§ 547.6 What are the minimum technical standards for enrolling and enabling Class II gaming system components?

(a) *General requirements.* Class II gaming systems shall provide a method to:

(1) Enroll and unenroll system components;

(2) Enable and disable specific system components.

(b) *Specific requirements.* Class II gaming systems shall:

(1) Ensure that only enrolled and enabled system components participate in gaming; and

(2) Ensure that the default condition for components shall be unenrolled and disabled.

§ 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems?

(a) *General requirements.* (1) The Class II gaming system shall operate in compliance with applicable regulations of the Federal Communications Commission.

(2) Prior to approval by the tribal gaming regulatory authority pursuant to § 547.4(d), the Class II gaming system shall have obtained from Underwriters' Laboratories, or its equivalent, relevant certification(s) required for equipment of its type, including but not limited to certifications for liquid spills, electromagnetic interference, etc.

(b) *Printed circuit boards.* (1) Printed circuit boards that have the potential to affect the outcome or integrity of the game, and are specially manufactured or proprietary and not off-the-shelf, shall display a unique identifier such as a part number and/or revision number, which shall be updated to reflect new revisions or modifications of the board.

(2) Switches or jumpers on all circuit boards that have the potential to affect the outcome or integrity of any game, progressive award, financial instrument, cashless transaction, voucher transaction, or accounting records shall be capable of being sealed.

(c) *Electrostatic discharge.* Class II gaming system components accessible to the public shall be constructed so that they exhibit immunity to human body electrostatic discharges on areas exposed to contact. Static discharges of ±15 kV for air discharges and ±7.5 kV for contact discharges may not cause damage, or inhibit operation or integrity of the Class II gaming system.

(d) *Physical enclosures.* Physical enclosures shall be of a robust construction designed to resist determined illegal entry. All protuberances and attachments such as buttons, identification plates, and labels shall be sufficiently robust to avoid unauthorized removal.

(e) *Player interface.* The player interface shall include a method or means to:

(1) Display information to a player; and

(2) Allow the player to interact with the Class II gaming system.

(f) *Account access components.* A Class II gaming system component that reads account access media shall be located within a secure, locked or tamper-evident area or in a cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components. In addition, the account access component:

(1) Shall be constructed so that physical tampering leaves evidence of such tampering; and

(2) Shall provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition.

(g) *Financial instrument storage components.* Any Class II gaming system components that store financial instruments and that are not operated under the direct control of a gaming operation employee or agent shall be located within a secure and locked area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components.

(h) *Financial instrument acceptors.* (1) Any Class II gaming system components that handle financial instruments and that are not operated under the direct control of an agent shall:

(i) Be located within a secure, locked and tamper-evident area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components;

(ii) Be able to detect the entry of valid or invalid financial instruments and to provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition; and

(iii) Be constructed to permit communication with the Class II gaming system of the accounting information required by § 547.9(a) and by applicable provisions of any Commission and tribal gaming regulatory regulations governing minimum internal control standards.

(2) Prior to completion of a valid financial instrument transaction by the Class II gaming system, no monetary amount related to that instrument shall be available for play. For example, credits shall not be available for play until currency or coupon inserted into an acceptor is secured in the storage component.

(3) The monetary amount related to all valid financial instrument transactions by the Class II gaming system shall be recorded as required by § 547.9(a) and the applicable provisions of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(i) *Financial instrument dispensers.* (1) Any Class II gaming system components that dispense financial instruments and that are not designed to be operated under the direct control of a gaming operation employee or agent shall:

(i) Be located within a secure, locked and tamper-evident area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components;

(ii) Provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition; and

(iii) Be constructed to permit communication with the Class II gaming system of the accounting information required by § 547.9(a) and by applicable provisions of any Commission and tribal gaming regulatory regulations governing minimum internal control standards.

(2) The monetary amount related to all valid financial instrument transactions by the Class II gaming system shall be recorded as required by § 547.9(a) and the applicable provisions of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(j) *Game Outcome Determination Components.* Any Class II gaming system logic components that affect the game outcome and that are not designed to be operated under the direct control of a gaming operation employee or agent shall be located within a secure, locked and tamper-evident area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components. DIP switches or jumpers that can affect the integrity of the Class II gaming system must be capable of being sealed by the tribal gaming regulatory authority.

(k) *Door access detection.* All components of the Class II gaming system that are locked in order to meet the requirements of this part shall include a sensor or other methods to monitor an open door. In addition:

(1) A door open sensor, and its components or cables, shall be secure against attempts to disable them or interfere with their normal mode of operation; and

(2) It shall not be possible to disable a door open sensor, or access components within, without first properly opening the door.

(l) *Separation of functions/no limitations on technology.* Nothing herein shall prohibit the account access component, financial instrument storage component, financial instrument acceptor, and financial instrument dispenser from being included within the same component, or separated into individual components.

§ 547.8 What are the minimum technical software standards applicable to Class II gaming systems?

This section provides general software standards for Class II gaming systems for the play of Class II games.

(a) *Player interface displays.* (1) If not otherwise provided to the player, the player interface shall display the following:

(i) The purchase or wager amount;

(ii) Game results; and

(iii) Any player credit balance.

(2) Between plays of any game and until the start of the next play, or until the player selects a new game option such as purchase or wager amount or card selection, whichever is earlier, if not otherwise provided to the player, the player interface shall display:

(i) The total purchase or wager amount and all prizes and total credits won for the last game played;

(ii) The final results for the last game played, including alternate displays of results, if any; and

(iii) Any default purchase or wager amount for the next play.

(b) *Game initiation and play.* (1) Each game played on the Class II gaming system shall follow and not deviate from a constant set of rules for each game provided to players pursuant to § 547.16. Any change in rules constitutes a different game. There shall be no automatic or undisclosed changes of rules.

(2) For bingo games and games similar to bingo, the Class II gaming system shall not alter or allow to be altered the card permutations or game rules used for play of a Class II game unless specifically chosen by the player prior to commitment to participate in the game. No duplicate cards shall be sold for any common draw.

(3) No game play shall commence and, no financial instrument or credit shall be accepted on the affected player interface, in the presence of any fault condition that affects the outcome of the game, open door, or while in test, audit, or lock-up mode.

(4) The player must choose to participate in the play of a game.

(c) *Audit Mode.* (1) If an audit mode is provided, the Class II gaming system shall provide, for those components actively involved in the audit:

(i) All accounting functions required by § 547.9, by applicable provisions of any Commission regulations governing minimum internal control standards, and by any internal controls adopted by the tribe or tribal gaming regulatory authority;

(ii) Display player interface identification; and

(iii) Display software version or game identification;

(2) Audit mode shall be accessible by a secure method.

(3) Accounting function data shall be accessible by an authorized person at any time, except during a payout, during a handpay, or during play.

(4) The Class II gaming system shall disable credit acceptance on the affected player interface while in audit mode, except during credit acceptance testing.

(d) *Last game recall.* The last game recall function shall:

(1) Be retrievable at all times, other than when the recall component is involved in the play of a game, upon the operation of an external key-switch, entry of an audit card, or a similar method;

(2) Display the results of recalled games as originally displayed or in text representation, including alternate display results implemented in video, rather than electro-mechanical, form, if any, so as to enable the tribal gaming regulatory authority or operator to clearly identify the game sequences and results that occurred;

(3) Allow the Class II gaming system component providing game recall, upon return to normal game play mode, to restore any affected display to the positions, forms and values displayed before access to the game recall information; and

(4) Provide the following information for the current and previous four games played and shall display:

(i) Game start time, end time, and date;

(ii) The total number of credits at the start of play, less the purchase or wager amount;

(iii) The purchase or wager amount;

(iv) The total number of credits at the end of play; and

(v) The total number of credits won as a result of the game recalled, and the value in dollars and cents for progressive prizes, if different.

(vi) For bingo games and games similar to bingo only, also display:

(A) The card(s) used by the player;

(B) The identifier of the bingo game played;

(C) The numbers or other designations drawn, in the order that they were drawn;

(D) The numbers or other designations and prize patterns covered on each card;

(E) All prizes won by the player, including winning patterns and alternate displays implemented in video, rather than electro-mechanical form, if any; and

(F) The unique identifier of the card on which prizes were won;

(vii) For pull-tab games only, also display:

(A) The result(s) of each pull-tab, displayed in the same pattern as on the tangible pull-tab;

(B) All prizes won by the player;

(C) The unique identifier of each pull tab; and

(D) Any other information necessary to fully reconstruct the current and four previous plays.

(e) *Voucher and credit transfer recall.* Notwithstanding the requirements of any other section in this part, a Class II gaming system shall have the capacity to:

(1) Display the information specified in § 547.11(b)(5)(ii) through (vi) for the last five vouchers or coupons printed and the last five vouchers or coupons accepted; and

(2) Display a complete transaction history for the last five cashless transactions made and the last five cashless transactions accepted.

(f) *Software signature verification.* The manufacturer or developer of the Class II gaming system must provide to the testing laboratory and to the tribal gaming regulatory authority an industry-standard methodology, acceptable to the tribal gaming regulatory authority, for verifying the Class II gaming system game software. By way of illustration, for game software stored on rewritable media, such methodologies include signature algorithms and hashing formulas such as SHA–1.

(g) *Test, diagnostic, and demonstration modes.* If test, diagnostic, and/or demonstration modes are provided, the Class II gaming system shall, for those components actively involved in the test, diagnostic, or demonstration mode:

(1) Clearly indicate when that component is in the test, diagnostic, or demonstration mode;

(2) Not alter financial data on that component other than temporary data;

(3) Only be available after entering a specific mode;

(4) Disable credit acceptance and payment unless credit acceptance or payment is being tested; and

(5) Terminate all mode-specific functions upon exiting a mode.

(h) *Multi-game.* If multiple games are offered for player selection at the player interface, the player interface shall:

(1) Provide a display of available games;

(2) Provide the means of selecting among them;

(3) Display the full amount of the player's credit balance;

(4) Identify the game selected or being played; and

(5) Not force the play of a game after its selection.

(i) *Program interruption and resumption.* The Class II gaming system software shall be designed so that upon resumption following any interruption, the system:

(1) Is able to return to a known state;

(2) Shall check for any fault condition upon resumption;

(3) Shall verify the integrity of data stored in critical memory;

(4) Shall return the purchase or wager amount to the player in accordance with the rules of the game; and

(5) Shall detect any change or corruption in the Class II gaming system software.

(j) *Class II gaming system components acting as progressive controllers.* This paragraph applies to progressive controllers and components acting as progressive controllers in Class II gaming systems.

(1) Modification of progressive parameters shall be conducted in a secure manner approved by the tribal gaming regulatory authority. Such parameters may include:

(i) Increment value;

(ii) Secondary pool increment(s);

(iii) Reset amount(s);

(iv) Maximum value(s); and

(v) Identity of participating player interfaces.

(2) The Class II gaming system component or other progressive controller shall provide a means of creating a progressive balancing report for each progressive link it controls. At a minimum, that report shall provide balancing of the changes of the progressive amount, including progressive prizes won, for all participating player interfaces versus current progressive amount(s), plus progressive prizes. In addition, the report shall account for, and not be made inaccurate by, unusual events such as:

(i) Class II gaming system critical memory clears;

(ii) Modification, alteration, or deletion of progressive prizes;

(iii) Offline equipment; or

(iv) Multiple site progressive prizes.

(k) *Critical memory.* (1) Critical memory may be located anywhere within the Class II gaming system. Critical memory is any memory that maintains any of the following data:

(i) Accounting data;

(ii) Current credits;

(iii) Configuration data;

(iv) Last game recall information required by § 547.8(d);

(v) Game recall information for the current game, if incomplete;

(vi) Software state (the last normal state software was in before interruption);

(vii) RNG seed(s), if necessary for maintaining integrity;

(viii) Encryption keys, if necessary for maintaining integrity;

(ix) Progressive prize parameters and current values;

(x) The five most recent financial instruments accepted by type, excluding coins and tokens;

(xi) The five most recent financial instruments dispensed by type, excluding coins and tokens; and

(xii) The five most recent cashless transactions paid and the five most recent cashless transactions accepted.

(2) Critical memory shall be maintained using a methodology that enables errors to be identified and acted upon. All accounting and recall functions shall be verified as necessary to ensure their ongoing integrity.

(3) The validity of affected data stored in critical memory shall be checked after each of the following events:

(i) Every restart;

(ii) Each attendant paid win;

(iii) Each attendant paid progressive win;

(iv) Each sensored door closure; and

(v) Every reconfiguration, download, or change of prize schedule or denomination requiring operator intervention or action.

(l) Secured access. Class II gaming systems that use a logon or other means of secured access shall include a user account lockout after a predetermined number of consecutive failed attempts to access system.

§ 547.9 What are the minimum technical standards for Class II gaming system accounting functions?

This section provides standards for accounting functions used in Class II gaming systems.

(a) *Required accounting data.* The following minimum accounting data, however named, shall be maintained by the Class II gaming system.

Title	Description
(1) Amount In	The total value of all financial instruments and cashless transactions accepted by the Class II gaming system. Each type of financial instrument accepted by the Class II gaming system shall be tracked independently, and as required by applicable requirements of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.
(2) Amount Out	The total value of all financial instruments and cashless transactions paid by the Class II gaming system, plus the total value of attendant pay. Each type of financial instrument paid by the Class II Gaming System shall be tracked independently, and as required by applicable requirements of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(b) *Accounting data storage.* If the Class II gaming system electronically maintains accounting data:

(1) Accounting data shall be stored with at least eight decimal digits.

(2) Credit balances shall have sufficient digits to accommodate the design of the game.

(3) Accounting data displayed to the player may be incremented or decremented using visual effects, but the internal storage of this data shall be immediately updated in full.

(4) Accounting data shall be updated upon the occurrence of the relevant accounting event.

(5) Modifications to accounting data shall be recorded, including the identity of the person(s) making the modifications, and be reportable by the Class II gaming system.

(c) *Rollover.* Accounting data that rolls over to zero shall not corrupt data.

(d) *Credit balance display and function.* (1) Any credit balance maintained at the player interface shall be prominently displayed at all times except:

(i) In audit, configuration, recall and test modes; or

(ii) Temporarily, during alternate displays of game results.

(2) Progressive prizes may be added to the player's credit balance provided:

(i) The player credit balance is maintained in dollars and cents;

(ii) The progressive accounting data is incremented in number of credits; or

(iii) The prize in dollars and cents is converted to player credits or transferred to the player's credit balance in a manner that does not mislead the player or cause accounting imbalances.

(3) If the player credit balance displays in credits, but the actual balance includes fractional credits, the Class II gaming system shall display the fractional credit when the player credit balance drops below one credit.

§ 547.10 What are the minimum standards for Class II gaming system critical events?

This section provides standards for events such as system critical faults, deactivation, door open or other changes of states, and lockup within the Class II gaming system.

(a) *Fault events.* (1) The following events are to be treated as described below:

Events	Definition and action to be taken
(i) Component fault	Reported when a fault on a component is detected. When possible, this event message should indicate what the nature of the fault is.
(ii) Financial storage component full	Reported when a financial instrument acceptor or dispenser includes storage, and it becomes full. This event message should indicate what financial storage component is full.
(iii) Financial output component empty.	Reported when a financial instrument dispenser is empty. The event message should indicate which financial output component is affected, and whether it is empty.
(iv) Financial component fault	Reported when an occurrence on a financial component results in a known fault state.
(v) Critical memory error	Some critical memory error has occurred. When a non-correctable critical memory error has occurred, the data on the Class II gaming system component can no longer be considered reliable. Accordingly, any game play on the affected component shall cease immediately, and an appropriate message shall be displayed, if possible.
(vi) Progressive communication fault.	If applicable; when communications with a progressive controller component is in a known fault state.
(vii) Program storage medium fault	The software has failed its own internal security check or the medium itself has some fault. Any game play on the affected component shall cease immediately, and an appropriate message shall be displayed, if possible.

(2) The occurrence of any event identified in paragraph (a)(1) of this section shall be recorded.

(3) Upon clearing any event identified in paragraph (a)(1) of this section, the Class II gaming system shall:

(i) Record that the fault condition has been cleared;

(ii) Ensure the integrity of all related accounting data; and

(iii) In the case of a malfunction, return a player's purchase or wager according to the rules of the game.

(b) *Door open/close events.* (1) In addition to the requirements of paragraph (a)(1) of this section, the Class II gaming system shall perform the following for any component affected by any sensored door open event:

(i) Indicate that the state of a sensored door changes from closed to open or opened to closed;

(ii) Disable all financial instrument acceptance, unless a test mode is entered;

(iii) Disable game play on the affected player interface;

(iv) Disable player inputs on the affected player interface, unless test mode is entered; and

(v) Disable all financial instrument disbursement, unless a test mode is entered.

(2) The Class II gaming system may return the component to a ready to play state when all sensored doors are closed.

(c) *Non-fault events.* The following non-fault events are to be treated as described below, if applicable:

Event	Definition and action to be taken
(1) Player interface power off during play.	This condition is reported by the affected component(s) to indicate power has been lost during game play.
(2) Player interface power on	This condition is reported by the affected component(s) to indicate it has been turned on.
(3) Financial instrument storage component container/stacker removed.	This condition is reported when a financial instrument storage container has been removed. The event message should indicate which storage container was removed.

§ 547.11 What are the minimum technical standards for money and credit handling?

This section provides standards for money and credit handling by a Class II gaming system.

(a) *Credit acceptance, generally.* (1) Upon any credit acceptance, the Class II gaming system shall register the correct number of credits on the player's credit balance.

(2) The Class II gaming system shall reject financial instruments deemed invalid.

(b) *Credit redemption, generally.* (1) For cashable credits on a player interface, players shall be allowed to cash out and/or redeem those credits at the player interface except when that player interface is:

(i) Involved in the play of a game;

(ii) In audit mode, recall mode or any test mode;

(iii) Detecting any sensored door open condition;

(iv) Updating the player credit balance or total win accounting data; or

(v) Displaying a fault condition that would prevent cash-out or credit redemption. In this case a fault indication shall be displayed.

(2) For cashable credits not on a player interface, the player shall be allowed to cash out and/or redeem those credits at any time.

(3) A Class II gaming system shall not automatically pay an award subject to mandatory tax reporting or withholding.

(4) Credit redemption by voucher or coupon shall conform to the following:

(i) A Class II gaming system may redeem credits by issuing a voucher or coupon when it communicates with a voucher system that validates the voucher or coupon.

(ii) A Class II gaming system that redeems credits by issuing vouchers and coupons shall either:

(A) Maintain an electronic record of all information required by paragraphs (b)(5)(ii) through (vi) of this section; or

(B) Generate two identical copies of each voucher or coupon issued, one to be provided to the player and the other to be retained within the machine for audit purposes.

(5) Valid vouchers and coupons shall contain the following:

(i) Gaming operation name and location;

(ii) The identification number of the Class II gaming system component or the player interface number, as applicable;

(iii) Date and time of issuance;

(iv) Alpha and numeric dollar amount;

(v) A sequence number;

(vi) A validation number that:

(A) Is produced by a means specifically designed to prevent repetition of validation numbers; and

(B) Has some form of checkcode or other form of information redundancy to prevent prediction of subsequent validation numbers without knowledge of the checkcode algorithm and parameters;

(vii) For machine-readable vouchers and coupons, a bar code or other form of machine readable representation of the validation number, which shall have enough redundancy and error checking to ensure that 99.9% of all misreads are flagged as errors;

(viii) Transaction type or other method of differentiating voucher and coupon types; and

(ix) Expiration period or date.

(6) Transfers from an account may not exceed the balance of that account.

(7) For Class II gaming systems not using dollars and cents accounting and not having odd cents accounting, the Class II gaming system shall reject any transfers from voucher payment systems or cashless systems that are not even multiples of the Class II gaming system denomination.

(8) Voucher redemption systems shall include the ability to report redemptions per redemption location or user.

§ 547.12 What are the minimum technical standards for downloading on a Class II gaming system?

This section provides standards for downloading on a Class II gaming system.

(a) *Downloads.* (1) Downloads are an acceptable means of transporting approved content, including but not limited to software, files, data, and prize schedules.

(2) Downloads of software, games, prize schedules, or other download packages shall be conducted only as authorized by the tribal gaming regulatory authority.

(3) Downloads shall use secure methodologies that will deliver the download data without alteration or modification, in accordance with § 547.15(a).

(4) Downloads conducted during operational periods shall be performed in a manner that will not affect game play.

(5) Downloads shall not affect the integrity of accounting data.

(6) The Class II gaming system or the tribal gaming regulatory authority shall log each download of any download package. Each log record shall contain as a minimum:

(i) The time and date of the initiation of the download;

(ii) The time and date of the completion of the download;

(iii) The Class II gaming system components to which software was downloaded;

(iv) The version(s) of download package and any software downloaded. Logging of the unique software signature will satisfy this requirement;

(v) The outcome of any software verification following the download (success or failure); and

(vi) The name and identification number, or other unique identifier, of any individual(s) conducting or scheduling a download.

(b) *Verifying downloads.* Following download of any game software, the Class II gaming system shall verify the downloaded software using a software signature verification method that meets the requirements of § 547.8(f). The tribal gaming regulatory authority shall confirm the verification.

§ 547.13 What are the minimum technical standards for program storage media?

This section provides minimum standards for removable, (re-)writable, and non-writable storage media in Class II gaming systems.

(a) *Removable program storage media.* All removable program storage media shall maintain an internal checksum or signature of its contents. Verification of this checksum or signature is to be performed after every restart. If the verification fails, the affected Class II gaming system component(s) shall lock up and enter a fault state.

(b) *Non-rewritable program storage media.* (1) All EPROMs and Programmable Logic Devices (PLDs) that have erasure windows shall be fitted with covers over their erasure windows.

(2) All unused areas of EPROMs shall be written with the inverse of the erased state (e.g., zero bits (00 hex) for most EPROMs), random data, or repeats of the program data.

(3) Flash memory storage components intended to have the same logical function as ROM, i.e. not to be dynamically written, shall be write-protected or otherwise protected from unauthorized modification.

(4) The write cycle shall be closed or finished for all CD-ROMs such that it is not possible to write any further data to the CD.

(5) Write protected hard disks are permitted if the means of enabling the write protect is easily viewable and can be sealed in place.

(c) *Writable and rewritable program storage media.* (1) Writable and rewritable program storage, such as hard disk drives, Flash memory, writable CD-ROMs, and writable DVDs, may be used provided that the software stored thereon may be verified using the mechanism provided pursuant to § 547.8(f).

(2) Program storage shall be structured so there is a verifiable separation of fixed data (e.g. program, fixed parameters, DLLs) and variable data.

(d) *Identification of program storage media.* (1) All program storage media that is not re-writable in circuit, (e.g. EPROM, CD–ROM) shall be uniquely identified, displaying:

(i) Manufacturer;

(ii) Program identifier;

(iii) Program version number(s); and

(iv) Location information, if critical (e.g. socket position 3 on the printed circuit board).

§ 547.14 What are the minimum technical standards for electronic random number generation?

This section provides minimum standards for electronic RNGs in Class II gaming systems.

(a) *Properties.* (1) All RNGs shall produce output having the following properties:

(i) Statistical randomness;

(ii) Unpredictability; and

(iii) Non-repeatability.

(b) *Statistical Randomness.* (1) Numbers produced by an RNG shall be statistically random individually and in the permutations and combinations used in the application under the rules of the game. For example, if a bingo game with 75 objects with numbers or other designations has a progressive winning pattern of the five numbers or other designations on the bottom of the card and the winning of this prize is defined to be the five numbers or other designations are matched in the first five objects drawn, the likelihood of each of the 75C5 combinations are to be verified to be statistically equal.

(2) Numbers produced by an RNG shall pass the statistical tests for randomness to a 99% confidence level, which may include:

(i) Chi-square test;

(ii) Equi-distribution (frequency) test;

(iii) Gap test;

(iv) Poker test;

(v) Coupon collector's test;

(vi) Permutation test;

(vii) Run test (patterns of occurrences shall not be recurrent);

(viii) Spectral test;

(ix) Serial correlation test potency and degree of serial correlation (outcomes shall be independent from the previous game); and

(x) Test on subsequences.

(c) *Unpredictability.* (1) It shall not be feasible to predict future outputs of an RNG, even if the algorithm and the past sequence of outputs are known.

(2) Unpredictability shall be ensured by re-seeding or by continuously cycling the RNG, and by providing a sufficient number of RNG states for the applications supported.

(3) Re-seeding may be used where the re-seeding input is at least as statistically random as, and independent of, the output of the RNG being re-seeded.

(d) *Non-repeatability.* The RNG shall not be initialized to reproduce the same output stream that it has produced before, nor shall any two instances of an RNG produce the same stream as each other. This property shall be ensured by initial seeding that comes from:

(1) A source of ''true'' randomness, such as a hardware random noise generator; or

(2) A combination of timestamps, parameters unique to a Class II gaming system, previous RNG outputs, or other, similar method.

(e) *General requirements.* (1) Software that calls an RNG to derive game outcome events shall immediately use the output returned in accordance with the game rules.

(2) The use of multiple RNGs is permitted as long as they operate in accordance with this section.

(3) RNG outputs shall not be arbitrarily discarded or selected.

(4) Where a sequence of outputs is required, the whole of the sequence in the order generated shall be used in accordance with the game rules.

(5) The Class II gaming system shall neither adjust the RNG process or game outcomes based on the history of prizes obtained in previous games nor make any reflexive or secondary decision that affects the results shown to the player or game outcome. Nothing in this paragraph shall prohibit the use of alternative displays.

(f) *Scaling algorithms and scaled numbers.* An RNG that provides output scaled to given ranges shall:

(1) Be independent and uniform over the range;

(2) Provide numbers scaled to the ranges required by game rules, and notwithstanding the requirements of paragraph (e)(3) of this section, may discard numbers that do not map uniformly onto the required range but shall use the first number in sequence which does map correctly to the range;

(3) Be capable of producing every possible outcome of a game according to its rules; and

(4) Use an unbiased algorithm. A scaling algorithm is considered to be unbiased if the measured bias is no greater than 1 in 100 million.

§ 547.15 What are the minimum technical standards for electronic data communications between system components?

This section provides minimum standards for electronic data communications with gaming equipment or components used with Class II gaming systems.

(a) *Sensitive data.* Communication of sensitive data shall be secure from eavesdropping, access, tampering, intrusion or alteration unauthorized by the tribal gaming regulatory authority. Sensitive data shall include, but not be limited to:

(1) RNG seeds and outcomes;

(2) Encryption keys, where the implementation chosen requires transmission of keys;

(3) PINs;

(4) Passwords;

(5) Financial instrument transactions;

(6) Transfers of funds;

(7) Player tracking information;

(8) Download Packages; and

(9) Any information that affects game outcome.

(b) *Wireless communications.* (1) Wireless access points shall not be accessible to the general public.

(2) Open or unsecured wireless communications are prohibited.

(3) Wireless communications shall be secured using a methodology that makes eavesdropping, access, tampering, intrusion or alteration impractical. By way of illustration, such methodologies include encryption, frequency hopping, and code division multiplex access (as in cell phone technology).

(c) Methodologies shall be used that will ensure the reliable transfer of data and provide a reasonable ability to detect and act upon any corruption of the data.

(d) Class II gaming systems shall record detectable, unauthorized access or intrusion attempts.

(e) Remote communications shall only be allowed if authorized by the tribal gaming regulatory authority. Class II gaming systems shall have the ability to enable or disable remote access, and the default state shall be set to disabled.

(f) Failure of data communications shall not affect the integrity of critical memory.

(g) The Class II gaming system shall log the establishment, loss, and re-establishment of data communications between sensitive Class II gaming system components.

§ 547.16 What are the minimum standards for game artwork, glass, and rules?

This section provides standards for the display of game artwork, the displays on belly or top glass, and the display and disclosure of game rules, whether in physical or electronic form.

(a) *Rules, instructions, and prize schedules, generally.* The following shall at all times be displayed or made readily available to the player upon request:

(1) Game name, rules, and options such as the purchase or wager amount stated clearly and unambiguously;

(2) Denomination;

(3) Instructions for play on, and use of, the player interface, including the functions of all buttons; and

(4) A prize schedule or other explanation, sufficient to allow a player to determine the correctness of all prizes awarded, including;

(i) The range and values obtainable for any variable prize;

(ii) Whether the value of a prize depends on the purchase or wager amount; and

(iii) The means of division of any pari-mutuel prizes; but

(iv) For bingo and games similar to bingo, the prize schedule or other explanation need not state that subsets of winning patterns are not awarded as additional prizes (*e.g.* five in a row does not also pay three in a row or four in a row), unless there are exceptions, which shall be clearly stated.

(b) *Disclaimers.* The Class II gaming system shall continually display:

(1) ''Malfunctions void all prizes and plays'' or equivalent; and

(2) ''Actual Prizes Determined by Bingo [or other applicable Class II game] Play. Other Displays for Entertainment Only.'' or equivalent.

§ 547.17 How does a gaming operation apply for a variance from these standards?

(a) *Tribal Gaming Regulatory Authority approval.* (1) A tribal gaming regulatory authority may approve a variance from the requirements of this part if it has determined that the

variance will achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the tribal gaming regulatory authority approves a variance, it shall submit to the Chairman within 30 days, a detailed report, which shall include the following:

(i) An explanation of how the variance achieves a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace; and

(ii) The variance as granted and the record on which it is based.

(3) In the event that the tribal gaming regulatory authority or the tribe's government chooses to submit a variance request directly to the Chairman for joint government to government review, the tribal gaming regulatory authority or tribal government may do so without the approval requirement set forth in paragraph (a) (1) of this section.

(b) *Chairman Review.* (1) The Chairman may approve or object to a variance granted by a tribal gaming regulatory authority.

(2) Any objection by the Chairman shall be in written form with an explanation why the variance as approved by the tribal gaming regulatory authority does not provide a level of security or integrity sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Chairman fails to approve or object in writing within 60 days after the date of receipt of a complete submission, the variance shall be considered approved by the Chairman. The Chairman and the tribal gaming regulatory authority may, by agreement, extend this deadline an additional 60 days.

(4) No variance may be implemented until approved by the tribal gaming regulatory authority pursuant to paragraph (a)(1) of this section or the Chairman has approved pursuant to paragraph (b)(1) of this section.

(c) *Commission Review.* (1) Should the tribal gaming regulatory authority elect to maintain its approval after written objection by the Chairman, the tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(i) Within 60 days of receiving an objection, the tribal gaming regulatory authority shall file a written notice of appeal with the Commission which may include a request for an oral hearing or it may request that the matter be decided upon written submissions.

(ii) Within 10 days after filing a notice of appeal the tribal gaming regulatory authority shall file a supplemental statement specifying the reasons why the tribal gaming regulatory authority believes the Chairman's objection should be reviewed, and shall include supporting documentation, if any.

(iii) Failure to file an appeal or submit the supplemental statement within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(iv) If an oral hearing is requested it shall take place within 30 days of the notice of appeal and a record shall be made.

(v) If the tribal gaming regulatory authority requests that the appeal be decided on the basis of written submission, the Commission shall issue a written decision within 30 days of receiving the supplemental statement

(vi) The Commission shall issue a decision within 30 days of the oral hearing. The Commission shall uphold the objection of the Chairman, only if, upon de novo review of the record upon which the Chairman's decision is based, the Commission determines that the variance approved by the tribal gaming regulatory authority does not achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

(vii) The Commission's decision shall constitute final agency action.

Dated: October 17, 2007.

Philip N. Hogen,

Chairman

Cloyce V. Choney,

Vice Chairman

Norman H. DesRosiers

Commissioner.

[FR Doc. E7–20789 Filed 10–23–07; 8:45 am]

BILLING CODE 7565–01–P

Federal Register

Wednesday,
October 24, 2007

Part V

The President

Proclamation 8192—National Character Counts Week, 2007

Proclamation 8193—National Forest Products Week, 2007

Executive Order 13449—Protection of Striped Bass and Red Drum Fish Populations

Federal Register
Vol. 72, No. 205
Wednesday, October 24, 2007

Presidential Documents

Title 3—

The President

Proclamation 8192 of October 19, 2007

National Character Counts Week, 2007

By the President of the United States of America

A Proclamation

The greatness of a nation is measured not by power or wealth but by the character of its people. During National Character Counts Week, we underscore our dedication to promoting values for our young people and encourage all Americans to demonstrate good character.

As America's youth strive to become responsible adults, they carry with them the values and traditions they were taught as children. At home, parents and families can teach universal values such as respect, tolerance, self-restraint, fairness, and compassion. In the community, we all can set good examples and demonstrate the virtues of leadership, patriotism, and responsible citizenship. The members of our Armed Forces demonstrate the strength of America's character by answering the call of service to our Nation.

Through the Helping America's Youth initiative, caring adults are connected with at-risk youth so that they have a mentor and an example as they navigate the challenges young people face. By working together, we can give children the skill and habits they need to reach their full potential.

During National Character Counts Week and throughout the year, I urge all citizens to support the character development of our youth and make a difference in the lives of others. One way for all Americans to add to the character of our country is to volunteer to help a neighbor in need, and more information can be found at volunteer.gov. I encourage every American to serve a cause greater than themselves and set a positive example in their community.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 21 through October 27, 2007, as National Character Counts Week. I call upon public officials, educators, librarians, parents, students, and all Americans to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–5297
Filed 10–23–07; 8:50 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8193 of October 19, 2007

National Forest Products Week, 2007

By the President of the United States of America

A Proclamation

During National Forest Products Week, we celebrate the rich blessings of our Nation's forests, and we recognize the important resources they provide to our communities and our economy.

Our Nation's forests supply vital products and create important employment opportunities. Trees provide wood to make homes, furniture, musical instruments, paper for books and newspapers, and packaging materials. These and other products are created by the construction and manufacturing industries and provide economic security for many of our citizens.

All Americans have an obligation to protect the Earth and a responsibility to be good stewards of our land, and my Administration has made forest health a high priority. Under the Healthy Forest Initiative, we are helping to protect the American people, their communities, and the environment from potentially devastating wildfires. Together we can conserve our woodlands and help leave a lasting legacy for future generations.

Recognizing the importance of our forests in ensuring our Nation's well-being, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 21 through October 27, 2007, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–5298
Filed 10–23–07; 8:50 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13449 of October 20, 2007

Protection of Striped Bass and Red Drum Fish Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, to assist in ensuring faithful execution of the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Coastal Fisheries Cooperative Management Act, and the Atlantic Striped Bass Conservation Act (chapters 38, 71, and 71A of title 16, United States Code), and to conserve striped bass and red drum fish, it is hereby ordered as follows:

Section 1. *Policy*. It shall be the policy of the United States to conserve striped bass and red drum for the recreational, economic, and environmental benefit of the present and future generations of Americans, based on sound science and in cooperation with State, territorial, local, and tribal governments, the private sector, and others, as appropriate.

Sec. 2. *Implementation*. (a) To carry out the policy set forth in section 1, the Secretary of Commerce shall:

(i) encourage, as appropriate, management under Federal, State, territorial, tribal, and local laws that supports the policy of conserving striped bass and red drum, including State designation as gamefish where the State determines appropriate under applicable law;

(ii) revise current regulations, as appropriate, to include prohibiting the sale of striped bass and red drum caught within the Exclusive Economic Zone of the United States off the Atlantic Ocean and the Gulf of Mexico;

(iii) periodically review the status of the striped bass and red drum populations within waters subject to the jurisdiction of the United States and:

(A) take such actions within the authority of the Secretary of Commerce as may be appropriate to carry out the policy set forth in section 1 of this order; and

(B) recommend to the President such actions as the Secretary may deem appropriate to advance the policy set forth in section 1 that are not within the authority of the Secretary.

(b) Nothing in this order shall preclude or restrict the production, possession, or sale of striped bass or red drum fish that have been produced by aquaculture.

(c) The Secretary of Commerce shall implement subsections 2(a)(i) and (iii), insofar as they relate to Atlantic striped bass, jointly with the Secretary of the Interior, as appropriate.

Sec. 3. *Definitions*. As used in this order:

(a) ''Exclusive Economic Zone of the United States'' means the marine area of the United States as defined in Presidential Proclamation 5030 of March 10, 1983, with, for purposes of this order, the inner boundary of that zone being a line coterminous with the seaward boundary of each of the coastal States;

(b) ''red drum'' means the species *Sciaenops ocellatus*; and

(c) ''striped bass'' means the species *Morone saxatilis*.

Sec. 4. *General Provisions.* (a) This order shall be implemented in a manner consistent with applicable law (including but not limited to interstate compacts to which the United States has consented by law, treaties and other international agreements to which the United States is a party, treaties to which the United States and an Indian tribe are parties, and laws of the United States conferring rights on Indian tribes) and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any other person.

THE WHITE HOUSE,
October 20, 2007.

[FR Doc. 07–5299
Filed 10–23–07; 8:50 am]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 474/P.L. 110–95

To award a congressional gold medal to Michael Ellis DeBakey, M.D. (Oct. 16, 2007; 121 Stat. 1008)

S. 1612/P.L. 110–96

International Emergency Economic Powers Enhancement Act (Oct. 16, 2007; 121 Stat. 1011)

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