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RESERVATIONS: (202) 741–6008

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Federal Register

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1170

RIN 0581–AC66

[Docket No. AMS–07–0047; DA–06–07]

Dairy Product Mandatory Reporting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: The Agricultural Marketing Service (AMS) is reopening the comment period for 30 days for the interim final rule for the Dairy Product Mandatory Reporting program that was published in the **Federal Register** on July 3, 2007. This reopening of the comment period will provide interested parties with an additional opportunity to submit comments on all aspects of the program, including but not limited to the product specifications and whether there should be a minimum transaction volume for reported transactions. AMS will review and consider the submitted comments as it promulgates a final rule.

DATES: The comment period for the interim final rule published at 72 FR 36341, July 3, 2007, is reopened. Comments must be submitted on or before December 3, 2007.

ADDRESSES: Comments (four copies) should be submitted to John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229–Room 2753, 1400 Independence Ave., SW., Washington, DC 20250–0229 or faxed to (202) 690–0552. Comments may also be submitted at the Federal eRulemaking portal: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments can be viewed in the Office of the Chief Economist during regular business hours, or at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229-Room 2753, 1400 Independence Ave., SW., Washington, DC 20250–0229, (202) 720–7091.

SUPPLEMENTARY INFORMATION: This program is a statutory requirement pursuant to the Agricultural Marketing Act of 1946 [7 U.S.C. 1621 *et seq.*], hereinafter referred to as the ''Act''.

The Act provides for and accordingly, the interim final rule published in the **Federal Register** on July 3, 2007 (72 FR 36341), established a Dairy Product Mandatory Reporting program that: (1) Requires persons engaged in manufacturing dairy products to provide to the Department of Agriculture (Department) certain information including the price, quantity, and moisture content, where applicable, of dairy products sold by the manufacturer; and (2) Requires manufacturers and other persons storing dairy products to report to the Department information on the quantity of dairy products stored.

This reopening of the comment period will provide interested parties with an additional opportunity to submit comments on all aspects of the program, including but not limited to the product specifications and whether there should be a minimum transaction volume for reported transactions. Specifically, AMS also solicits comments on whether Kosher dairy products and products produced from milk from cows not treated with recombinant bovine somatotropin (rbST) should be included in the Dairy Product Prices report, whether these products command a premium in the marketplace, and whether there are increased production costs associated with manufacturing these products. During the initial comment period, some commenters may have limited their comments to the issue of forward contracting and to the verification aspect of the program.

AMS seeks comments on all aspects of the program, including those specific issues outlined above, and will consider all comments received in promulgating a final rule.

Authority: 7 U.S.C. 1637–1637b, as amended by Pub. L. 106–532, 114 Stat. 2541 and Pub. L. 107–171, 116 Stat. 207.

Dated: October 26, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E7–21559 Filed 11–1–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 274, Special Condition 23–214–SC]

Special Conditions; Cessna Aircraft Company Model 208B, Garmin G1000; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Cessna Aircraft Company, for an amended type certificate for the Model 208B airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays model G1000 manufactured by Garmin for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is October 26, 2007. Comments must be received on or before December 3, 2007.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE274, Room 506, 901 Locust, Kansas City, Missouri 64106. All

comments must be marked: Docket No. CE274. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jim Brady, Aerospace Engineer, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 274.'' The postcard will be date stamped and returned to the commenter.

Background

On January 29, 2007, Cessna Aircraft Company, applied to the FAA for a new Amended Type Certificate for the project airplane. The Model 208B is currently approved under TC No. A37CE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Cessna Aircraft Company must show that the project aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the project:

14 CFR part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by Amendments 23–1 through 23–28; 14 CFR part 36, effective December 1, 1969, as amended by Amendments 36–1 through 36–18; SFAR 27 effective February 1, 1974, as amended by Amendments 27–1 through 27–4. Special Conditions as follows; 23–ACE–3: Dynamic Evaluation, Engine Installation; Equivalent Level of Safety as follows: 14 CFR part 23, § 23.955(f)(2), Fuel System. Compliance with ice protection has been demonstrated in accordance with § 23.1419 when ice protection equipment is installed in accordance with the airplane equipment list and is operated per the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual; as applicable, and § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards for the Model 208B because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Cessna Aircraft Company plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed

value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter (RMS), electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Model 208B, Garmin G1000 project. Should Cessna Aircraft Company apply at a later date for an amended or supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Model 208B, Garmin G1000 project airplane modified by Cessna Aircraft Company to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on October 26, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21599 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28635; Airspace Docket No. 07–ACE–7]

Establishment of Class D Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area extending upward from the surface to and including 3,300 feet above sea level within a 4.6-mile radius of Independence Municipal Airport, KS. The establishment of an air traffic control tower has made this action necessary.

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

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT

Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 15, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Independence Municipal Airport, KS (72 FR 45699). The proposal was to establish a Class D airspace area to provide controlled airspace for flight operations due to the establishment of an air traffic control tower. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This notice amends part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area extending upward from the surface to an including 3,300 feet above sea level within a 4.6-mile radius of Independence Municipal Airport, KS. The establishment of an air traffic control tower has made this action necessary. The intended effect of this action is to provide controlled airspace for flight operations at Independence Municipal Airport, KS. The area will be depicted on appropriate aeronautical charts.

Class D airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. of the same Order. The Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequently and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significantly 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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is to minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains flight operations at Independence Municipal Airport, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTNIG POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, signed August 14, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ACE KS D Independence, KS [New]

Independence Municipal Airport, KS
(Lat. 37°09′30″ N., long. 95°46′42″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.6-mile radius of Independence Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Forth, Texas, on October 11, 2007.

Ronnie L. Uhlenhaker,

Team Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–5422 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22490; Airspace Docket No. 05–AEA–018]

Amendment of Class E Airspace; Pottsville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Class E Airspace at Pottsville, PA to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Pottsville Hospital (91PN), Pottsville, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 30, 2007.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2005–22490; Airspace Docket No. 05–AEA–018, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing data for comments will be considered, and this rule may be amended or withdrawn in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22490; Airspace Docket No. 05–AEA–018.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Pottsville, PA establishing the controlled airspace required to support the new RNAV (GPS) Copter 095 Point in Space (PinS) approach developed for Pottsville Hospital. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass the IAP and for Instrument Flight Rule (IFR) operations, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish additional class E5 Airspace at Pottsville, PA. The current E5 airspace at Pottsville does not provide adequate airspace for this new approach. This action provides the required controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of the authority as it established controlled airspace near the Pottsville Hospital, Pottsville, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963., Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Pottsville, PA [AMENDED]

Schuylkill County (Joe Zerbey) Airport
(Lat. 40°42′23″ N., long. 76°22′24″ W.)

Pottsville Hospital [ADDED]
Point In Space Coordinates
(Lat. 40°41′45″ N., long. 76°12′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Schuylkill County (Joe Zerbey) Airport; and that airspace within a 6-mile radius of the point in space (lat. 40°41′45″ N., long. 76°12′34″ W.) serving Pottsville Hospital.

* * * * *

Issued in College Park, Georgia, on October 15, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center

[FR Doc. 07–5420 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22493; Airspace Docket No. 05–AEA–021]

Amendment of Class E Airspace; Philipsburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Class E Airspace at Philipsburg, PA, to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Philipsburg Area Hospital, Philipsburg, PA.

DATES: Effective 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before December 5, 2007.

ADDRESSES: Send comments on this rule to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket No. FAA–2005–22493; Airspace Docket No. 05–AEA–021, at the beginning of your comments.

You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room C210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, System Support Specialist, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22493; Airspace Docket No. 05–AEA–021.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Philipsburg, PA establishing the required controlled airspace to supply the newly developed Copter RNAV (GSP) 238 Point in Space (PinS) approach at the Philipsburg Area Hospital. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to contain the IAP and for Instrument Flight Rule (IFR) operations to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish additional Class E5 Airspace at Philipsburg, PA. The controlled airspace at Philipsburg is not adequate to support this new approach. This action provides the required controlled airspace. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Philipsburg Area Hospital, Philipsburg, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007 effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Philipsburg, PA [AMENDED]

Mid-State Airport, Philipsburg, PA
(Lat. 40°53′04″ N., long. 78°05′14″ W.)
Philipsburg VORTAC
(Lat. 40°54′59″ N., long. 77°59′34″ W.)
Philipsburg Area Hospital [ADDED]
Point in Space Coordinates
(Lat. 40°55′06″ N., long. 78°12′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mid-State Airport extending clockwise from a 261° bearing to a 012° bearing from the airport and within a 7.4-mile radius of Mid-State Airport extending clockwise from a 012° bearing to 098° bearing from the airport and within a 6.6-mile radius of Mid-State Airport extending clockwise from a 098° bearing to a 183° bearing from the airport and within a 8.3-mile radius of Mid-State Airport extending clockwise from a 183° bearing to a 261° bearing from the airport and within 3.1 miles each of the Philipsburg VORTAC 067° radial extending from the VORTAC to 10 miles northeast of the VORTAC and within 3.5 miles each side of the 327° bearing from a point at lat. 40°53′09″ N., long. 78°05′06″ W., extending from said point to a point 7.4 miles northwest and within 2.2 miles each side of the Philipsburg VORTAC 330° radial extending from the VORTAC to 5.3 miles northwest of the VORTAC and within 3.1 miles each side of the Philipsburg VORTAC 301° radial extending from the VORTAC to 10 miles northwest of the VORTAC; and that airspace within a 6-mile radius of the point in space (lat. 40°55′06″ N., long. 78°12′06″ W.) serving the Philipsburg Area Hospital.

Issued in College Park, Georgia, on October 15, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5421 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28869; Airspace Docket No. 07–ACE–11]

Establishment of Class E5 Airspace; Tarkio, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and correction.

SUMMARY: This rule establishes a Class E airspace area extending upward from 700 feet above the surface at Tarkio, MO and corrects the Airport Reference Point coordinates. The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Gould Peterson Municipal Airport, Tarkio, MO and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

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: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 22, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Tarkio, MO (72 FR 46931). The proposal was to establish a Class E5 airspace area to bring Tarkio, MO airspace into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This rule amends part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at Gould Peterson Municipal Airport, Tarkio, MO and corrects the Airport Reference Point coordinates. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Gould Peterson Municipal Airport, Tarkio, MO. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. of the same Order. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Gould Peterson Municipal Airport, Tarkio, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal aviation Administration Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE E5 Tarkio, MO [New]

Gould Peterson Municipal Airport, Tarkio, MO

(Lat. 40°26′46″ N., long. 95°22′02″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Gould Peterson Municipal Airport, Tarkio, MO.

* * * * *

Issued in Fort Worth, TX, on October 11, 2007.

Ronnie L. Uhlenhaker,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–5425 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 5981]

RIN 1400–AC29

Exchange Visitor Program—Sanctions and Terminations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department is amending its regulations to add to and modify the existing actions for which the Department may sanction a sponsor. The change in the regulations will streamline the review process to offer sanctioned sponsors the procedural due process rights equal to those that the Administrative Procedure Act guarantees. In addition, the Final Rule eliminates summary suspension and modifies program suspension to halt the activities of a sponsor that has committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, or damage the national security interests of the United States.

DATES: *Effective Date:* This Final Rule is effective 30 days from November 2, 2007.

SUPPLEMENTARY INFORMATION: The former United States Information Agency (USIA) and, as of October 1, 1999, its successor, the U.S. Department of State (Department), have promulgated regulations governing the Exchange Visitor Program. Those regulations now appear at 22 CFR Part 62. The regulations governing sanctions appear at 22 CFR 62.50, and regulations governing termination of a sponsor's designation, at 22 CFR 62.60 through 62.62. The ultimate goals of the sanctions regulations are to further the foreign policy interests of the United States, and to protect the health, safety, and welfare of Exchange Visitor Program participants. These regulations largely have remained unchanged since 1993, when the USIA undertook a major regulatory reform of the Exchange Visitor Program, as administered by the Office of Exchange Coordination and Designation (Office).

On May 31, 2007, the Department published a Proposed Rule on sanctions and terminations with a comment period ending July 30, 2007. 72 FR 30302–30308. Forty-nine (49) parties filed comments, which the Department reviewed and evaluated. The Alliance for International Educational and Cultural Exchange (Alliance), a membership organization, and the Council on International Educational Exchange (CIEE) represented a number of individual designated program sponsors in their comments. Twenty-five (25) commenting parties favored the Proposed Rule. The remaining commenting parties criticized the Proposed Rule in one or more respects, and several parties recommended changes to the Proposed Rule.

Having thoroughly reviewed the comments and the changes that commenting parties recommended, the Department has determined that it will, and hereby does, adopt the Proposed Rule, with minor edits, and promulgates it as a Final Rule. The Department's evaluation of the written comments and recommendations follows.

> As the Department noted in the Supplementary Information accompanying the Proposed Rule, The [Fulbright-Hays] Act authorizes the President to provide for such exchanges if it would strengthen international cooperative relations. The language of the Act and its legislative history make it clear that the Congress considered international educational and cultural exchanges to be a significant part of the public diplomacy efforts of the President in connection with Constitutional prerogatives in conducting foreign affairs. Thus, exchange visitor programs that do not further the public diplomacy goals of the United States should not be designated initially, or retain their designation. Accordingly, it is imperative that the Department have the power to revoke program designations or deny applications for program redesignation when it determines that such programs do not serve the country's public diplomacy goals.

The above statement is the underpinning for the Department's entire approach to the sanctions regime of the Exchange Visitor Program.

Comment Analysis

One of the overall criticisms of the Proposed Rule was that the Department eliminated the requirement that it find alleged violations of Part 62 to be willful or negligent before imposing sanctions. Fifteen (15) comments were opposed to the change. The Department believes that such criticism is without merit. A program sponsor, prior to being designated or redesignated, must demonstrate that it (i.e., the responsible officer and alternate responsible

officer(s)), its employees, and third parties acting on its behalf have the knowledge and ability to comply and remain in continual compliance with all provisions of part 62. [§ 62.3(b)(1); § 62.9(a) and (f)(1) and (2); and § 62.11(a).] Since knowledge and ability to comply and remain in full compliance with the regulations are fundamental requirements of sponsor designation, it is essentially irrelevant whether a sponsor violates regulations willfully, negligently, or even inadvertently. Violations, whether or not willful or negligent, may harm the national security or the public diplomacy goals of the United States, or pose a threat to the health, safety or welfare of program participants, and the Department must have the capacity to respond appropriately. Moreover, the process set forth in the revised sanctions regulations provides that a sponsor being sanctioned may submit a statement in opposition to or mitigation of the proposed sanction. This process provides the sponsor with the opportunity to explain the circumstances of the alleged violation, and to argue that a lesser sanction, or no sanction at all, would be appropriate in view of those circumstances. In addition, the review process available for significant sanctions provides a second opportunity for the sponsor to make its case before a panel of three Review Officers not connected with the Exchange Visitor Program, thus affording additional protection from the arbitrary or capricious imposition of sanctions. A total of sixteen (16) comments were in favor of the change.

Twelve (12) commenting parties opined that the criteria for imposing sanctions are extremely broad and do not provide an adequate basis for the Department to determine, for example, under what circumstances it would propose to terminate rather than suspend a sponsor's designation or impose lesser sanctions. It should be noted in this regard that four of the six grounds for imposing sanctions are the same as those in the prior rule. The two new grounds—actions that may compromise the national security of the United States or undermine its foreign policy objectives—are of a nature that inherently requires broad discretion in the choice of appropriate sanctions. Moreover, as previously noted, the process for imposing and reviewing proposed sanctions affords a sponsor ample opportunity to argue that alternative sanctions would be more appropriate.

Nineteen (19) of the commenting parties criticized the lack of an agency review process for the ''lesser sanctions,'' in which the decision of the Office is the final Department decision. [§ 62.50(b)] One (1) comment was in favor. However, the lack of a review process for ''lesser sanctions'' is unchanged from the prior rule. Under the prior rule, reduction in the size of a sponsor's program was deemed a ''lesser sanction'' (and thus not subject to further agency review) if it was limited to a reduction in participants of 10 percent or less or, in the case of a geographical reduction, if it would not cause a significant financial burden for the sponsor. The only change in the Proposed Rule was an increase in the potential size of the reduction, from 10 to 15 percent, and the reminder that subsequent 10-percent reductions may be imposed in the case of continued violations (a possibility that was inherent in the prior rule). The reason for the more limited process for ''lesser sanctions'' remains the same as in the prior rule: their relatively minor impact on sponsors does not justify the burden and expense, for both the Department and sponsors, of the more extensive process afforded for more significant sanctions. The modest increase of 5 percent in the size of a potential program reduction does not, in the Department's view, alter this rationale.

Fourteen (14) commenting parties criticized the bases for and the process by which the Department will implement a suspension. The prior rule allowed for ''suspension'' and ''summary suspension.'' In practice, the Department never utilized the suspension provision of the regulations, and that provision is eliminated in the Final Rule, which redesignates ''summary suspension'' as ''suspension.'' Under the prior rule, only one ground for this sanction existed: endangering the health, safety or welfare of a participant. The Final Rule adds another ground, the necessity of which became apparent after the events of 9/11: Damaging the national security interests of the United States. The Department believes that the continued necessity for it to be able to act swiftly, and with immediate effect, in such circumstances is self-evident. Moreover, it should be noted that the summary process for such suspensions has been improved for sponsors in two respects. First, a sponsor is afforded additional time in which to submit an initial opposition to the suspension. Second, such an opposition is received, reviewed and decided at a higher level, by the Principal Deputy Assistant Secretary for Educational and Cultural Affairs (PDAS) rather than by the Office. As under the prior rule, the sponsor may seek further agency review of this decision, by a three-member review panel.

Thirteen (13) of the commenting parties criticized new language providing that the Department may determine that a class of designated programs compromises the national security of the United States or no longer furthers the public diplomacy mission of the United States [§ 62.62]. Three (3) comments were in favor of this regulation. If the Department makes such a determination, it may revoke the designations, or deny applications for redesignation, of sponsors of that class of exchange visitor programs. As the Department noted in the Supplementary Information accompanying the Proposed Rule, the Exchange Visitor Program is part of the Department's public diplomacy efforts in furtherance of the President's Constitutional prerogatives in conducting foreign affairs. Accordingly, the Department noted, termination of a program category because it no longer furthers the Department's public diplomacy mission, or compromises national security, has always been inherently within the discretion of the Department. Following 9/11, the Department concluded that its regulations should make that authority, and the means by which it would be exercised, explicit.

Thirteen (13) of the commenting parties opposed the elimination of a trial-type hearing in appeals of significant sanctions. Moreover, those same parties opine that the criteria for imposing a suspension are more stringent than the criteria for revoking a designation or denying an application for redesignation of a program.

It is entirely appropriate that the grounds for the suspension sanction be drawn far more narrowly than those for the other significant sanctions. Suspension represents a rapid response to an urgent problem, with expedited procedures including the possibility of an immediately effective sanction, not stayed by any opposition or request for review. In this, it is unlike any other sanction. That is why it is reserved for violations whose seriousness justifies it: Cases in which national security is compromised, or in which a danger is posed to the health, safety or welfare of participants. It would be inappropriate to apply its procedures to other violations; and it would be equally inappropriate to restrict the availability of other sanctions to its narrow grounds.

With regard to the elimination of trial-type review procedures for significant sanctions, the Department has found that such procedures are costly, time-consuming and burdensome for both the

Department and sponsors. As noted in the Supplementary Information accompanying the Proposed Rule, such procedures are not required by any applicable statute, and are not necessary to afford due process. Under the Final Rule, sponsors are afforded notice and ample, repeated opportunities to be heard. When the Office proposes a significant sanction, a sponsor may submit to the PDAS an opposition, including factual and legal arguments and additional documentary material, such as affidavits and other evidence. Following a statement in response by the Office, the PDAS issues a written, reasoned decision confirming, withdrawing or modifying the sanction. The sponsor may then seek review of the PDAS decision, before a three-member panel, no member of which may be from the Bureau of Educational and Cultural Affairs (of which the Office forms a part, and which is supervised by the PDAS). Once again, the sponsor has the opportunity to file a statement setting forth arguments of fact and law, accompanied by documentary evidence and other attachments. Following a statement in response by the PDAS, the review panel may, at its discretion, convene a brief meeting with the parties, solely for the purpose of clarifying the written submissions. Then the review panel issues a written, reasoned decision confirming, withdrawing or modifying the sanction. This procedure affords ample notice and opportunity to be heard, with a reasoned decision on a clear record. If the program sponsor is not satisfied with the decision ultimately reached by the Review Officers, it continues to have the same opportunities as before to seek relief in an appropriate court.

Finally, ten (10) of the commenting parties requested that sponsors be given the opportunity to cure alleged violations before the Department imposes sanctions. The Department believes that if it were to provide sponsors in all cases the automatic right to cure an alleged violation or deficiency with no risk that an actual sanction will be imposed, then the deterrent effect of the sanctions regime effectively would be eliminated. However, as a practical matter, the Office seldom proposes formal sanctions without first engaging in informal discussions seeking to bring the sponsor into voluntary compliance. Moreover, although there is no right to cure, a sponsor facing the imposition of sanctions certainly may offer a settlement or, in submitting its statement in opposition to or mitigation of the sanction, show it has cured the alleged violations and argue for a less severe sanction, or no sanction at all, and may request a meeting to present its views.

Seven (7) comments favored, and two opposed, the paper review set forth at § 62.50(f). The comments stated that a review should also include statements and information provided by exchange visitor participants, concerned citizens, and school officials.

Thirteen (13) comments were received in favor of a sponsor's not being able to reapply for designation for a minimum of five (5) years once a designation has been revoked.

For the foregoing reasons, the Department is promulgating the Proposed Rule as a Final Rule.

Regulatory Analysis

Administrative Procedure Act, Unfunded Mandates Reform Act of 1995, and Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this Final Rule involves a foreign affairs function of the United States and is consequently exempt from the procedures required by 5 U.S.C. 553 pursuant to 5 U.S.C. 553(a)(1).

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small businesses.

The Final Rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have a substantial effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it has been determined that the Final Rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Since this rulemaking is exempt from 5 U.S.C. 553 and no other law required the Department to give notice of proposed rulemaking, this rulemaking also is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Executive Order 13272, § 3(b). Nonetheless, the Department has analyzed the provisions of the Final Rule and certifies that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Executive Order 12866, as Amended

The Department does not consider this Final Rule to be a ''significant regulatory action'' under Executive Order 12866, as amended, § 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating, in conjunction with a domestic agency, regulations that are significant regulatory actions. The Department has, nevertheless, reviewed the Final Rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this Final Rule in light of §§ 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This Final Rule will not 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. Therefore, in accordance with § 6 of Executive Order 13132, it is determined that this Rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

This Final Rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural Exchange Programs.

■ Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The Authority citation for part 62 is amended as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681–761 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107–56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

■ 2. Section 62.50 is revised to read as follows:

§ 62.50 Sanctions.

(a) *Reasons for sanctions.* The Department of State (Department) may impose sanctions against a sponsor upon a finding by its Office of Exchange Coordination and Designation (Office) that the sponsor has:

(1) Violated one or more provisions of this Part;

(2) Evidenced a pattern of failure to comply with one or more provisions of this Part;

(3) Committed an act of omission or commission, which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or

(4) Otherwise conducted its program in such a way as to undermine the foreign policy objectives of the United States, compromise the national security interests of the United States, or bring the Department or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this Part, the Department, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions (''lesser sanctions'') on a sponsor upon a finding that the sponsor engaged in any of the acts or omissions set forth in § 62.50(a):

(i) A written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's Exchange Visitor Program designation, or other sanctions as set forth herein;

(ii) A declaration placing the exchange visitor sponsor's program on probation, for a period of time determined by the Department in its discretion, signifying a pattern of violation of regulations such that further violations could lead to suspension or revocation of the sponsor's Exchange Visitor Program designation, or other sanctions as set forth herein;

(iii) A corrective action plan designed to cure the sponsor's violations; or

(iv) Up to a 15 percent (15%) reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of its recruitment or activity. If the sponsor continues to violate the regulations in this Part, the Department may impose subsequent additional reductions, in ten-percent (10%) increments, in the authorized number of exchange visitors in the sponsor's program or in the geographic area of its recruitment or activity.

(2) Within ten (10) days after service of the written notice to the sponsor imposing any of the sanctions set forth in § 62.50(b)(1), the sponsor may submit to the Office a statement in opposition to or mitigation of the sanction. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. Sponsors shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. Upon review and consideration of such submission, the Office may, in its discretion, modify, withdraw, or confirm such sanction. All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) The decision of the Office is the final Department decision with regard to lesser sanctions in § 62.50(b)(1)(i)–(iv).

(c) *Suspension.* (1) Upon a finding that a sponsor has committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, or of damaging the national security interests of the United States, the Office may serve the sponsor with written notice of its decision to suspend the designation of the sponsor's program for a period not to exceed one hundred twenty (120) days. Such notice must specify the grounds for the sanction and the effective date thereof, advise the sponsor of its right to oppose the suspension, and identify the procedures for submitting a statement of opposition thereto. Suspension under this paragraph need not be preceded by the imposition of any other sanction or notice.

(2)(i) Within five (5) days after service of such notice, the sponsor may submit to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs (Principal Deputy Assistant Secretary, or PDAS) a statement in opposition to the Office's decision. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. A sponsor shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. The submission of a statement in opposition to the Office's decision will not serve to stay the effective date of the suspension.

(ii) Within five (5) days after receipt of, and upon consideration of, such opposition, the Principal Deputy Assistant Secretary shall confirm, modify, or withdraw the suspension by serving the sponsor with a written decision. Such decision must specify the grounds therefore, and advise the sponsor of the procedures for requesting review of the decision.

(iii) All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) The procedures for review of the decision of the Principal Deputy Assistant Secretary are set forth in §§ 62.50(d)(3) and (4), (g), and (h), except that the submission of a request for review will not serve to stay the suspension.

(d) *Revocation of designation.* (1) Upon a finding of any act or omission set forth at § 62.50(a), the Office may serve a sponsor with not less than thirty (30) days' written notice of its intent to revoke the sponsor's Exchange Visitor Program designation. Such notice must specify the grounds for the proposed sanction and its effective date, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition thereto. Revocation of designation under this paragraph need not be preceded by the imposition of any other sanction or notice.

(2)(i) Within ten (10) days after service of such written notice of intent to revoke designation, the sponsor may submit to the Principal Deputy Assistant Secretary a statement in opposition to or mitigation of the proposed sanction, which may include a request for a meeting.

(ii) The submission of such statement will serve to stay the effective date of the proposed sanction pending the decision of the Principal Deputy Assistant Secretary.

(iii) The Principal Deputy Assistant Secretary shall provide a copy of the statement in opposition to or mitigation of the proposed sanction to the Office. The Office shall submit a statement in response, and shall provide the sponsor with a copy thereof.

(iv) A statement in opposition to or mitigation of the proposed sanction, or

statement in response thereto, may not exceed 25 pages in length, double-spaced and, if appropriate, may include additional documentary material. Any additional documentary material may include an index of the documents and a summary of the relevance of each document presented.

(v) Upon consideration of such statements, the Principal Deputy Assistant Secretary shall modify, withdraw, or confirm the proposed sanction by serving the sponsor with a written decision. Such decision shall specify the grounds therefor, identify its effective date, advise the sponsor of its right to request a review, and identify the procedures for requesting such review.

(vi) All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) Within ten (10) days after service of such written notice of the decision of the Principal Deputy Assistant Secretary, the sponsor may submit a request for review with the Principal Deputy Assistant Secretary. The submission of such request for review will serve to stay the effective date of the decision pending the outcome of the review.

(4) Within ten (10) days after receipt of such request for review, the Department shall designate a panel of three Review Officers pursuant to § 62.50(g), and the Principal Deputy Assistant Secretary shall forward to each panel member all notices, statements, and decisions submitted or provided pursuant to the preceding paragraphs of § 62.50(d). Thereafter, the review will be conducted pursuant to § 62.50(g) and (h).

(e) *Denial of application for redesignation.* Upon a finding of any act or omission set forth at § 62.50(a), the Office may serve a sponsor with not less than thirty (30) days' written notice of its intent to deny the sponsor's application for redesignation. Such notice must specify the grounds for the proposed sanction and its effective date, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition thereto. Denial of redesignation under this section need not be preceded by the imposition of any other sanction or notice. The procedures for opposing a proposed denial of redesignation are set forth in § 62.50(d)(2), (d)(3), (d)(4), (g), and (h).

(f) *Responsible officers.* The Office may direct a sponsor to suspend or revoke the appointment of a responsible officer or alternate responsible officer for any of the reasons set forth in § 62.50(a). The procedures for suspending or revoking a responsible officer or alternate responsible officer are set forth at § 62.50(d), (g), and (h).

(g) *Review officers.* A panel of three Review Officers shall hear a sponsor's request for review pursuant to § 62.50(c), (d), (e), and (f). The Under Secretary of State for Public Diplomacy and Public Affairs shall designate one senior official from an office reporting to him/her, other than from the Bureau of Educational and Cultural Affairs, as a member of the Panel. The Assistant Secretary of State for Consular Affairs and the Legal Adviser shall each designate one senior official from their bureaus as members of the Panel.

(h) *Review.* The Review Officers may affirm, modify, or reverse the sanction imposed by the Principal Deputy Assistant Secretary. The following procedures shall apply to the review:

(1) Upon its designation, the panel of Review Officers shall promptly notify the Principal Deputy Assistant Secretary and the sponsor in writing of the identity of the Review Officers and the address to which all communications with the Review Officers shall be directed.

(2) Within fifteen (15) days after service of such notice, the sponsor may submit to the Review Officers four (4) copies of a statement identifying the grounds on which the sponsor asserts that the decision of the Principal Deputy Assistant Secretary should be reversed or modified. Any such statement may not exceed 25 pages in length, double-spaced; and any attachments thereto shall not exceed 50 pages. A sponsor shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the Principal Deputy Assistant Secretary, who shall, within fifteen (15) days after receipt of such statement, submit four (4) copies of a statement in response. Any such statement may not exceed 25 pages in length, double-spaced; and any attachments thereto shall not exceed 50 pages. The Principal Deputy Assistant Secretary shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the sponsor. No other submissions may be made unless specifically authorized by the Review Officers.

(3) If the Review Officers determine, in their sole discretion, that a meeting for the purpose of clarification of the written submissions should be held, they shall schedule a meeting to be held within twenty (20) days after the receipt of the last written submission. The meeting will be limited to no more than two (2) hours. The purpose of the meeting will be limited to the clarification of the written submissions. No transcript may be taken and no evidence, either through documents or by witnesses, will be received. The sponsor and the representative of the Principal Deputy Assistant Secretary may attend the meeting on their own behalf and may be accompanied by counsel.

(4) Following the conclusion of the meeting, or the submission of the last written submission if no meeting is held, the Review Officers shall promptly review the submissions of the sponsor and the Principal Deputy Assistant Secretary, and shall issue a signed written decision within thirty (30) days, stating the basis for their decision. A copy of the decision will be delivered to the Principal Deputy Assistant Secretary and the sponsor.

(5) If the Review Officers decide to affirm or modify the sanction, a copy of their decision shall also be delivered to the Department of Homeland Security and to the Bureau of Consular Affairs of the Department of State. The Office, at its discretion, may further distribute the decision.

(6) Unless otherwise indicated, the sanction, if affirmed or modified, is effective as of the date of the Review Officers' written decision, except in the case of suspension of program designation, which is effective as of the date specified pursuant to § 62.50(c).

(i) *Effect of suspension, revocation, or denial of redesignation.* A sponsor against which an order of suspension, revocation, or denial of redesignation has become effective may not thereafter issue any Certificate of Eligibility for Exchange Visitor (J–1) Status (Form DS–2019) or advertise, recruit for, or otherwise promote its program. Under no circumstances shall the sponsor facilitate the entry of an exchange visitor into the United States. An order of suspension, revocation, or denial of redesignation will not in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program applicants or participants.

(j) *Miscellaneous*—(1) *Computation of time.* In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day which is not one of

the aforementioned days. When the period of time prescribed or allowed is fewer than eleven (11) days, intermediate Saturdays, Sundays, or Federal legal holidays are excluded in the computation.

(2) *Service of notice to sponsor.* Service of notice to a sponsor pursuant to this section may be accomplished through written notice by mail, delivery, or facsimile, upon the president, chief executive officer, managing director, General Counsel, responsible officer, or alternate responsible officer of the sponsor.

■ 3. Subpart E is revised to read as follows:

Subpart E—Termination and Revocation of Programs

Sec.
62.60 Termination of designation.
62.61 Revocation.
62.62 Termination of, or denial of redesignation for, a class of designated programs.
62.63 Responsibilities of the sponsor upon termination or revocation.

§ 62.60 Termination of designation.

Designation will be terminated upon the occurrence of any of the circumstances set forth in this section.

(a) *Voluntary termination.* A sponsor notifies the Department of its intent to terminate its designation voluntarily and withdraws its program in SEVIS via submission of a ''cancel program'' request. The sponsor's designation shall terminate upon submission of such notification. Such sponsor may apply for a new program designation.

(b) *Inactivity.* A sponsor fails to comply with the minimum program size or duration requirements, as specified in § 62.8 (a) and (b), in any 12-month period. Such sponsor may apply for a new program designation.

(c) *Failure to file annual reports.* A sponsor fails to file annual reports for two (2) consecutive years. Such sponsor is eligible to apply for a new program designation.

(d) *Failure to file an annual management audit.* A sponsor fails to file an annual management audit, if such audits are required in the relevant program category. Such sponsor is eligible to apply for a new program designation upon the filing of the past due management audit.

(e) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply for designation of the new entity, and it may continue to administer the exchange visitor activities of the previously-designated program while the application for designation is pending before the Department of State:

(1) With respect to a for-profit corporation, a major change in ownership or control is deemed to have occurred when one third (33.33%) or more of its stock is sold or otherwise transferred within a 12-month period;

(2) With respect to a not-for-profit corporation, a major change of control is deemed to have occurred when 51 percent (51%) or more of the board of trustees or other like body, vested with its management, is replaced within a 12-month period.

(f) *Non-compliance with other requirements.* A sponsor fails to remain in compliance with Federal, State, local, or professional requirements necessary to carry out the activity for which it is designated, including loss of accreditation, or licensure.

(g) *Failure to apply for redesignation.* A sponsor fails to apply for redesignation, pursuant to the terms and conditions of § 62.7, prior to the conclusion of its current designation period. If so terminated, the former sponsor may apply for a new program designation, but the program activity will be suspended during the pendency of the application.

§ 62.61 Revocation.

The Department may terminate a sponsor's program designation by revocation for cause as specified in § 62.50. Such sponsor may not apply for a new designation for five (5) years following the effective date of the revocation.

§ 62.62 Termination of, or denial of redesignation for, a class of designated programs.

The Department may, in its sole discretion, determine that a class of designated programs compromises the national security of the United States or no longer furthers the public diplomacy mission of the Department of State. Upon such a determination, the Office shall:

(a) Give all sponsors of such class of designated programs not less than thirty (30) days' written notice of the revocation of Exchange Visitor Program designations for such programs, specifying therein the grounds and effective date for such revocations; or

(b) Give any sponsor of such class of designated programs not less than thirty (30) days' written notice of its denial of the sponsor's application for redesignation, specifying therein the grounds for such denial and effective date of such denial. Revocation of designation or denial of redesignation on the above-specified grounds for a class of designated programs is the final decision of the Department.

§ 62.63 Responsibilities of the sponsor upon termination or revocation.

Upon termination or revocation of its program designation, a sponsor must:

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation; and

(b) Notify exchange visitors who have not entered the United States that the program has been terminated or revoked, unless a transfer to another designated program can be obtained.

Dated: October 22, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–21522 Filed 11–1–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–07–088]

RIN 1625–AA00

Safety Zone: Holiday Flotilla Fireworks Display, Motts Channel/ Banks Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard proposes the establishment of a 1,000 foot safety zone around a fireworks display for the North Carolina Holiday Flotilla occurring on November 24, 2007, on Motts Channel/ Banks Channel, Wrightsville Beach, NC. This action is intended to restrict vessel traffic on Motts Channel. This safety zone is necessary to protect mariners from the hazards associated with fireworks displays.

DATES: This rule will be effective from 6 p.m. to 8 p.m. on November 24, 2007.

ADDRESSES: You may mail comments and related material to Commander, Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, NC 28512. Sector North Carolina maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for

inspection or copying at the Federal Building Fifth Coast Guard District between 9 a.m. and 2 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Chief Todd C. Mann, Marine Environmental Response Branch, Coast Guard Marine Safety Unit Wilmington, North Carolina at (910) 772–2216.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A Notice of Proposed Rulemaking Holiday Flotilla Fireworks Display, Motts Channel/Banks Channel, Wrightsville Beach, North Carolina was published on September 14, 2007 for review in the **Federal Register**. (72 FR 52534). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This safety zone is a necessary measure to help the community safely enjoy a holiday fireworks display. It is in the public interest to protect mariners from the hazards associate with fireworks displays and for this reason the Coast Guard is taking the necessary preventative measure of establishing this zone.

Background and Purpose

On November 24, 2007, the North Carolina Holiday Flotilla fireworks display will be held adjacent to Motts Channel/Banks Channel, Wrightsville Beach, NC. Spectators will be observing from both the shore and from vessels. Due to the need of protection of mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted.

Discussion of Comments and Changes

No comments were received.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of Motts Channel. The regulated area will consist of a 1000 foot safety zone around Bird Island position latitude 34°12′41″ N, longitude 077°48′26″ W, which is located south of the Seapath Yacht Club, Wrightsville Beach, NC. The safety zone will be enforced from 6 p.m. to 8 p.m. on November 24, 2007. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Captain of the Port Representative, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make advance notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of Motts Channel/Banks Channel November 24, 2007 between the hours of 6 p.m. and 8 p.m. The safety zone will not have a significant impact on a substantial number of small entities, because the zone will only be in place for a limited amount of time and maritime advisories will be issued in advance, so the mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Adam Schmid, Response Division, Coast Guard Marine Safety Unit, Wilmington, North Carolina at (910) 772–2191. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the U. S. Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' is required for this rule. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 Subpart C as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–123, to read as follows:

§ 165.T05–123 Safety Zone: Motts Channel/ Banks Channel, Wrightsville Beach, North Carolina

(a) *Location:* The following area is a safety zone: All waters of Motts Channel/Banks Channel within 1000 feet of Bird Island at Wrightsville Beach, NC, approximate position latitude 34°12′41″ N, longitude 077°48′26″ W in the Captain of the Port Sector North Carolina zone as defined in 33 CFR 3.25–20.

(b) *Definition.* As used in this section the ''on scene representative'' means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(c) *Regulation:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or the on scene representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign;

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) Persons or vessels requiring entry into or passage within the safety zone must request authorization from the Captain of the Port, Sector North Carolina or his on scene representative by telephone at (252) 247–4570 or (252) 247–4571 or by marine band radio on VHF channel 16 (156.8 MHz).

(d) *Enforcement period:* This regulation will be enforced from 6 p.m. to 8 p.m. on November 24, 2007.

Dated: October 10, 2007.

William D. Lee,

Captain, U.S. Coast Guard, Sector North Carolina.

[FR Doc. E7–21589 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0590; FRL–8489–4]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Requests for Rescission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Nevada State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on August 28, 2006 and include certain regulations and statutes for which the State of Nevada is requesting rescission. The intended effect is to rescind unnecessary provisions from the applicable plan.

DATES: *Effective Date:* This rule is effective on December 3, 2007.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2006–0590 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all

documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Proposed Action
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I. Proposed Action

On August 28, 2006 (71 FR 50875), under the Clean Air Act (CAA or ''Act''), EPA proposed approval of certain revisions to the Nevada SIP and disapproval of certain other revisions. These revisions involve rules and statutory provisions previously approved in the Nevada SIP for which the State of Nevada is requesting rescission.

In our August 28, 2006 proposed rule, we made final approval of those rescission requests that we proposed to approve contingent upon the receipt of certain public notice and hearing documentation from the State of Nevada. On January 3, 2007 (72 FR 11), based on public notice and hearing documentation provided by the State for most of the requested rescission, we finalized the rescissions for most of the subject rules and statutory provisions. On June 13, 2007 (72 FR 32529), we published a second final rule related to our August 28, 2006 proposed rule. In our June 2007 final rule, we rescinded a Federal Implementation Plan (FIP) that we promulgated in the 1970's to regulate emissions of sulfur oxides from a now defunct smelter that had operated within White Pine County, Nevada.

In our January 3, 2007 final rule, we listed 12 provisions for which the State had yet to provide documentation of public participation and for which, therefore, we were deferring final action. See 72 FR 11, at 16. On June 26, 2007, the Governor's designee, the Nevada Division of Environmental Protection (NDEP), submitted the necessary public participation documentation for 11 of the 12 provisions for which final action had been deferred in our January 3, 2007 final rule.[1] The 11 provisions are listed in the table below. Based on the documentation provided by NDEP on June 26, 2007, we now take final action to approve the requested rescission of the 11 provisions listed below.

SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS APPROVED

SIP provision	Title	Submittal date	Approval date
NAC 445.477	Confidential information	10/26/82	03/27/84
NAC 445.554	Nuisance	10/26/82	03/27/84
NAC 445.596	Ringelmann chart	10/26/82	03/27/84
NAC 445.662	Confidential information	10/26/82	03/27/84
NAC 445.695	Schedules for compliance	10/26/82	03/27/84
NAC 445.698	Appeal of director's decision: Application forms	10/26/82	03/27/84
NAC 445.700	Violations: Manner of paying fines	10/26/82	03/27/84
NAC 445.844	Odors	10/26/82	03/27/84
NRS 445.401	Declaration of public policy	12/29/78	07/10/80
NRS 445.466	Commission regulations: Notice and hearing	12/29/78	07/10/80
NRS 445.497	Notice of regulatory action; Requirement; method; contents of notice	12/29/78	07/10/80

The majority of the provisions in the table above represent defined terms that are not used by any other provisions in the applicable SIP or represent provisions that are not required for SIPs and thus are unnecessary and appropriate for rescission. Our proposed action and related technical support document (TSD) contain more information on the rules and statutory provisions cited above and our evaluation.

II. Public Comments and EPA Responses

EPA's August 28, 2006 proposed rule provided a 30-day public comment period. During this period, we received comments from Jennifer L. Carr and Michael Elges, NDEP, by letter dated September 25, 2006. In our January 3, 2007 final rule (72 FR 11), we summarized the comments from NDEP's letter and provided our responses. With respect to the 11 provisions for which final action is taken herein, NDEP indicated in its September 25, 2006 letter that it would be conducting the necessary public notice and hearing. NDEP's June 26, 2007 submittal provides the necessary public participation documentation and provides the basis for EPA to take this final action to approve the State's request to rescind the 11 provisions listed in the table above from the applicable Nevada SIP.

III. EPA Action

No comments were submitted that change our assessment of our proposed action. Therefore, as authorized in section 110(k) of the Act, EPA is finalizing the approval of the State's request to rescind the provisions listed in the table above from the applicable SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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

[1] NAC 445.617 (''Six-minute period'') is the lone rescission request among the 12 cited in the January 2007 final rule that is not being finalized today. In the submittal dated June 26, 2007, NDEP requests withdrawal of the rescission request for NAC 445.617 and, instead, replacement of NAC 445.617 in the SIP with approval of the current codification of the rule (i.e., NAC 445B.172). We will be taking action on submitted rule NAC 445B.172 in a separate document. Also, in the submittal dated June 26, 2007, NDEP provides public participation documentation for rescission of NAC 445.667 (''Excess emissions: Schedule maintenance; testing; malfunctions''), a rule covered by our proposal dated December 18, 2006 (71 FR 75690). We will take final action on rescission of NAC 445.667 in a separate document.

Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves rescissions of state law that are unnecessary to meet Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this 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 rescinds requirements under state law and does not impose any additional enforceable duty, 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).

This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not 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). This action merely approves rescissions of state law that are unnecessary to implement a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 16, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(14)(xi) and (c)(25)(ii) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(14) * * *

(xi) Previously approved on July 10, 1980 in paragraph (14)(ii) and now deleted without replacement: Nevada Revised Statutes (NRS) sections: 445.401, 445.466, and 445.497.

* * * * *

(25) * * *

(ii) Previously approved on March 27, 1984, in paragraph (25)(i)(A) and now deleted without replacement: Nevada Administrative Code (NAC) sections: 445.447, 445.554, 445.596, 445.662, 445.695, 445.698, 445.700, and 445.844.

* * * * *

[FR Doc. E7–21447 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7745]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency

Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Carolina:					
Alamance	City of Burlington (06–04–BY00P).	May 15, 2007, May 22, 2007, *The Times-News*.	The Honorable Stephen M. Ross, Mayor of the City of Burlington, P.O. Box 1358, 425 South Lexington Avenue, Burlington, North Carolina 27215.	August 20, 2007	370002
Dare	Town of Nags Head (07–04–4138P).	June 21, 2007, June 28, 2007, *The Coastland Times*.	Mr. Charles L. Cameron, Manager, Town of Nags Head, P.O. Box 99, 5401 South Croatan Highway, Nags Head, North Carolina 27959.	June 13, 2007	375356
Dare	Unincorporated Areas of Dare County (07–04–4138P).	June 21, 2007, June 28, 2007, *The Coastland Times*.	Mr. Terry Wheeler, Manager, Dare County, P.O. Drawer 1000, 211 Budleigh Street, Manteo, North Carolina 27954.	June 13, 2007	375348
Durham	City of Durham (07–04–2980P).	August 14, 2007, August 21, 2007, *The Herald-Sun*.	The Honorable William V. Bell, Mayor of the City of Durham, Office of the Mayor, 101 City Hall Plaza, Durham, North Carolina 27701.	August 7, 2007	370086
Durham	Unincorporated Areas of Durham County (07–04–2980P).	August 14, 2007, August 21, 2007, *The Herald-Sun*.	Mr. Michael M. Ruffin, Manager, Durham County, 200 East Main Street, 2nd Floor, Old Courthouse, Durham, North Carolina 27701.	August 7, 2007	370085
Orange	Unincorporated Areas of Orange County (06–04–C141P).	July 31, 2007, August 7, 2007, *Chapel Hill Herald*.	Mr. Moses Carey, Jr., Chairman of the Orange County, Board of Commissioners, 200 South Cameron Street, Hillsborough, North Carolina 27278.	November 5, 2007	370342
Union	Town of Indian Trail (06–04–BX22P).	May 15, 2007, May 22, 2007, *The Enquirer Journal*.	The Honorable Sandy Moore, Mayor of the Town of Indian Trail, P.O. Box 2430, Indian Trail, North Carolina 28079.	August 21, 2007	370235
Union	Unincorporated Areas of Union County (06–04–BX22P).	May 15, 2007, May 22, 2007, *The Enquirer Journal*.	Mr. Mike Shalati, Manager, Union County, 500 North Main Street, Room 925, Monroe, North Carolina 28112.	August 21, 2007	370234
Wake	Town of Wake Forest (07–04–0615P).	August 2, 2007, August 9, 2007, *The Wake Weekly*.	The Honorable Vivian A. Jones, Mayor of the Town of Wake Forest, 401 Elm Avenue, Wake Forest, North Carolina 27587.	November 7, 2007	370244

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 29, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21597 Filed 11–1–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 07–109]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules in order to ensure the efficient, rapid, and secure transmission of Emergency Alert System (EAS) alerts in a variety of formats (including text, audio, and video) and via different means (broadcast, cable, satellite, and other networks), increasing the reliability, security, and efficacy of the nation's EAS network.

DATES: The effective date is December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Beers, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–1170, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* (Order) in EB Docket No. 04–296, FCC 07–109, adopted May 31, 2007, and released July 12, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order

Next Generation EAS

1. In the *Order,* we reaffirm the obligations of today's EAS Participants to maintain existing EAS and establish the framework for the nation's Next Generation EAS. This Next Generation EAS will include new and innovative technologies and distribution systems that will provide increased redundancy and resiliency for the delivery of emergency alerts. We also take steps to ensure that the upgraded EAS will meet the needs of all Americans, including persons with hearing and vision disabilities and those who do not speak English. Finally, we will continue to harness the benefits of existing EAS while the Next Generation EAS is developed and deployed. The combination of the existing and Next Generation EAS systems will ensure the continuity of EAS while the Next Generation EAS is being implemented, and ensure that EAS alerts reach the largest number of affected people by multiple communications paths as quickly as possible.

2. Below, we describe the four cornerstones of the Next Generation EAS: (1) Maintaining the existing EAS network; (2) utilizing a common messaging protocol, CAP, to be implemented by all EAS Participants following its adoption by FEMA; (3) incorporating new authentication and security requirements; and (4) fostering the deployment of new, redundant EAS delivery systems, including satellite, Internet, and wireline networks.

Maintaining Existing EAS

3. Although a Presidential alert has never been sent over the EAS, the current EAS network has been used for state, local, and weather-related emergencies. We recognize that in certain emergency situations, battery-powered AM or FM receivers may be the primary source of emergency information for the general public. Broadcast and cable personnel are familiar with current EAS equipment and are trained in its use. In addition, it would be inadvisable to require immediate use of a new system until that system is fully in place and its reliability tested. We therefore do not agree with those commenters who argue that the existing EAS should be wholly abandoned or replaced at this time.

4. Instead, we conclude that broadcast, cable and other current EAS Participants should maintain the existing EAS, particularly since alternative delivery mechanisms, although potentially more robust, have yet to be deployed. We recognize, however, that EAS currently uses a station-relay message dissemination process that lacks the flexibility and redundancy of certain evolving digital communications systems. Consequently, we also require these current EAS Participants to upgrade their networks to the Next Generation EAS, as discussed below, while maintaining existing EAS.

5. *NOAA Weather Radio.* In addition, we disagree with those commenters who suggest that NWR should replace the existing EAS. We believe, however, that the NWR system should continue to be closely integrated with EAS. NWR is one of the principal sources of alert information, and is likely to continue to be the primary originator of weather-based alerts. We also recognize that voluntary efforts, including CEA's Public Alert™ Certification and Logo Program launched in April 2004, further enhance the value and potential of this proven emergency-alert delivery system. The record demonstrates that redundant alert-delivery systems will enhance the overall reach, efficacy, and reliability of the EAS as a whole. NWR provides an alternative source of emergency alerts, and we expect that it will continue to be an important component of EAS and the overall national public alert and warning system. We nevertheless caution EAS Participants that retransmit NWR alerts to ensure that such retransmission is consistent with our EAS rules and associated protocols.

Common Alerting Protocol (CAP) for EAS

6. In the *Further NPRM,* the Commission sought comment on the widespread assertion in the record that a common messaging protocol should be adopted to permit a digitally-based alert or warning to be distributed simultaneously over multiple platforms. The Commission noted that the Partnership for Public Warning had endorsed the OASIS Common Alerting Protocol (CAP) for this purpose and that many public and private organizations responsible for alerts believed that CAP offered the most practical means of quickly creating an effective interface between emergency managers and multiple emergency alert distribution platforms. Accordingly, the Commission asked whether CAP should be adopted as the common messaging protocol for any future digital alert system, and particularly for EAS alerts. The Commission also asked whether CAP would allow simultaneous distribution to radio, television, and wireless media such as mobile telephones and personal digital assistants (PDAs), and how it would ensure uniformity of alerts across

multiple platforms. Currently, the EAS and the NWS utilize the SAME protocol, which introduces special digital codes at the beginning and end of messages. SAME provides information concerning the originator of the alert, the event type, the areas affected, the duration of the alert, the time the alert was issued, and the station's call sign. SAME originally was developed to be transmitted over a radio medium with relatively simple devices receiving the message. For the most part, it performs well for the existing EAS and NWR but does not fully utilize the capabilities inherent in digital transmission.

7. The need for a more robust and flexible protocol that can take full advantage of digital technology has long been recognized. In 2000, the U.S. National Science and Technology Council issued its report, *Effective Disaster Warnings,* concluding that a ''standard method should be developed to collect and relay instantaneously and automatically all types of hazard warnings and reports locally, regionally, and nationally for input into a wide variety of dissemination systems.'' In 2001, more than 130 emergency managers and technologists initiated development of a common alert message standard. In 2003, this work became a part of the OASIS standards process of the Emergency Management Technical Committee. A year later, the Emergency Management Technical Committee released CAP version 1.0, which was revised in 2005 as CAP v. 1.1.

8. CAP is an open, interoperable standard that incorporates a language developed and widely used for web documents. Its standardized alert message format—based on the World Wide Web Consortium's (''W3C's'') Extensible Markup Language (''XML'')—is a text-based format that facilitates data sharing across different distribution systems. As noted by various commenters, the agreed-upon XML format of CAP can be accepted by a wide variety of devices or systems. The format also permits links to voice, audio or data files, images, and multilingual translations of the alert, and to links providing further information.

9. The CAP standard specifies what fields an alert message can contain and what information can be included in the particular fields. A CAP alert provides fields such as message type, scope, incident, event information, event certainty, sender, geographic scope, and the time when an alert becomes effective and expires. Because CAP has standardized alert elements, commenters assert it will facilitate accurate and meaningful message creation and decrease the potential for operator error. CAP also facilitates interoperability between devices, an attribute essential to establishing an EAS that can operate over multiple platforms.

10. Commenters who addressed the issue generally support the use of CAP as a means for standardizing emergency messages; and no parties indicated that CAP-based messages could not be readily accepted and processed by all EAS Participants. The USGS notes its own experience using CAP, and argues that CAP is an effective content standard that can be applied at interfaces between senders, transmitters, and receivers of alerts covering many of the common natural and man-made hazard situations. USGS concludes that CAP should be mandatory for the EAS. NASCIO also recognizes the flexibility of CAP, noting that any EAS initiator can take information from a CAP-based message and translate it into any other standard for distribution over a particular channel, network, or technology. CAP also is supported by individuals with hearing and sight disabilities, because it enables equivalent, multiple text and audio messages to be sent concerning the same event to a variety of devices that are accessible to such individuals.

11. We note that CAP also supports capabilities for a digital signature to authenticate the sender and validate the integrity of the text, and an encryption field that enables the encryption of the CAP message. An EAS initiator may encrypt, address, and otherwise secure a CAP alert, thus in part addressing security concerns that arise due to CAP's open text format. Further, CAP uniquely identifies each specific alert. Finally, CAP has been implemented by several government agencies including the USGS, NOAA NWS, and the Oregon Amber Alert Program. CAP also has been implemented in the Disaster Management Interoperability Services. Several governmental agencies, including FEMA and NOAA HAZCOLLECT, are testing CAP, and other agencies, such as the Center for Disease Control and the Virginia Department of Transportation, have endorsed it. We note that the U.S. Department of Defense and the U.S. Department of the Interior both voted for the adoption of CAP–V1.1.

12. We conclude that all EAS Participants will be required to accept alerts and warnings in the CAP format should that protocol be adopted by FEMA. This requirement applies to an EAS Participant regardless of whether the participant is utilizing existing EAS or the Next Generation EAS established in the *Order.* Although this requirement requires action by FEMA, we find that adopting it now furthers the prompt development of a state-of-the-art, next-generation national EAS. Significantly, many EAS Participants currently are implementing other revisions to their EAS systems, and they can incorporate CAP into these revisions. Specifically, should FEMA adopt CAP as the common alerting protocol for EAS alerts, EAS Participants must accept CAP-based alerts 180 days after the date that FEMA publishes the applicable technical standards for such CAP alerts. Because most commenters urge the Commission to adopt the CAP format, we find that EAS Participants are already aware that CAP will likely be adopted, and we believe that 180 days will give them adequate time to prepare to receive CAP alerts. EAS Participants have been on notice since November 10, 2005, when the *FNPRM* was issued, that the EAS delivery standards might change. Thus, we find that 180 days will give EAS participants a reasonable period of time in which to implement changes that they should have been expecting for over 18 months since the FNPRM was issued. We further find that 180 days is reasonable in light of the significant public interest, to protect life and property, in implementing next generation EAS systems as soon as possible. We also note that EAS Participants will have the time period between the release of the *Order* and FEMA action for preparation.

Authentication and Security

13. In the *2004 NPRM,* the Commission noted that security and encryption were not the primary design criteria when EAS was developed and initially implemented, and that emergency managers were becoming more aware of potential vulnerabilities within the system. The Commission expressed concern that the EAS may be subject to unauthorized access, and that a legitimate EAS signal could be subject to hacking or jamming. Although ENDECs currently have the capability for password protection, it is up to each EAS Participant to implement the safeguard, and there is no means to monitor the extent to which EAS Participants employ passwords. Additionally, when facilities are operating unattended, no one is available on-site to intervene should unauthorized use occur. Accordingly, the Commission sought comment on how to improve the security of EAS distribution methods, information, and equipment and how to ensure the security of any public warning system. It also sought comment on the authentication and verification of EAS

alerts. Cox agrees with the FCC that there are legitimate concerns regarding the security of the EAS, and contends that any attacks on EAS or unauthorized use could be devastating. As such, Cox urges the adoption of methods to keep the system secure from intentionally false control or sabotage. Radio stations WTOP(AM), WTOP–FM, and WXTR(AM) (WTOP) contend the security of EAS distribution channels is crucial to the system working properly. WTOP suggests that the security of emergency and test messages can be improved by switching to a system which encrypts messages and guarantees secure delivery with password protection and confirmation of delivery. NAB urges the FCC to coordinate with FEMA and equipment manufacturers to look for technical solutions for ensuring the security of EAS. Contra Costa states that digital technology, particularly the use of the CAP protocol, can protect and verify the security of public warning communication links, and can enable the consistent and comprehensive monitoring of all kinds and levels of warning activity nationwide. Contra Costa states just as the Internet Protocols enable various kinds of computers to work together, CAP can provide the basis for a secure ''warning internet'' that can leverage all our warning assets to achieve more than any single system can alone.

14. We agree with commenters that all EAS Participants should authenticate the source of, and validate the contents of, EAS alerts. As discussed above, CAP has the capability to allow those who initiate and retransmit EAS alerts to encrypt, authenticate, and validate EAS alerts. We believe that EAS Participants that configure their networks to receive CAP-formatted messages will be able to satisfactorily authenticate and validate EAS alerts in consultation with FEMA. Accordingly, should FEMA adopt CAP as the common alerting protocol for EAS alerts, all EAS Participants must configure their systems to incorporate CAP security functions within 180 days after FEMA publishes the standards for authentication and validation of CAP-formatted alerts. We expect EAS Participants to cooperate with FEMA in its efforts to develop policies, plans, and procedures that meet FEMA's requirements for the new delivery systems and CAP protocol adopted by FEMA.

Next Generation Distribution Systems

15. Recent experience demonstrates that natural disasters and terrorist incidents can adversely impact terrestrial telecommunications infrastructure. To achieve the Commission's goals of enhancing the redundancy, reliability and security of EAS, we enable the use of diverse EAS distribution platforms. Our actions today also will ensure that the Secretary of Homeland Security can implement the President's directive to provide ''as many communications pathways as practicable'' to reach the American people during crises.

16. The development of alternative distribution systems is already underway. For example, we note that the Association of Public Television Stations (''APTS'') has proposed a hybrid, satellite/DTV broadcast system that was an integral part of FEMA's Digital Emergency Alert System (DEAS) National Capital Region Pilot. On July 12, 2006, FEMA and APTS announced the successful completion of Phase II of the DEAS pilot, and that the new DEAS would be operational in the Gulf Coast and Atlantic regions by the end of 2006, and will be deployed nationally by the end of 2007.

17. We agree with commenters that satellite-based alert distribution could be a valuable complement to the existing EAS station-relay distribution method. The vast coverage area of satellite signal footprints would allow immediate alerting of substantial portions of the country with appropriate equipment. Satellite systems also are generally immune from natural disasters and therefore may provide critical redundancy in the event that terrestrial wireline or wireless infrastructure is compromised. We also agree with commenters that Internet-based systems may enhance the resiliency of the EAS distribution network. The Internet is a robust, packet-switched network with intelligent routing, and is designed to provide alternative routes to reach almost all users. Moreover, the Internet is ubiquitous and can enhance the geographic reach of EAS. The open design of the Internet also means that EAS applications can be designed to meet the specific needs of EAS without limitation by the network.

18. We conclude that the distribution architecture of the existing EAS should be enhanced. The record underscores that EAS could be improved by authorizing the delivery of alerts through the existing EAS coupled with new redundant, distribution systems for EAS. We conclude, however, that FEMA is best positioned to determine the types of additional EAS systems that should be accommodated by EAS Participants. We expect that EAS Participants will collaborate closely with FEMA and other governmental entities to fully implement such requirements. Accordingly, should FEMA announce technical standards for any Next Generation EAS alert delivery system, EAS Participants must configure their networks to receive CAP-formatted alerts delivered pursuant to such delivery system, whether wireline, Internet, satellite or other, within 180 days after the date that FEMA announces the technical standards for such Next Generation EAS alert delivery.

CAP and Next Generation EAS: Better Serving the Needs of Persons With Disabilities and Non-English Speakers

19. *Serving the needs of persons with disabilities.* President Bush's Executive Order mandates that the Secretary of Homeland Security ''include in the public alert and warning system the capability to alert and warn all Americans, including those with disabilities and those without an understanding of the English language.'' We believe that CAP could provide an important tool for helping to accomplish this goal.

20. CAP should facilitate the provision of functionally equivalent EAS alerts and warnings to persons with disabilities. Using CAP, the original format of warning messages could be converted into various formats, including text, video, and audio. Critical information graphically portrayed, scrolled, or crawled on the screen also could be accompanied by an audio description. Persons with hearing disabilities would be able to read the entire emergency message instead of a brief summary. Audio and visual formats are both important and could contain the same information. Moreover, a CAP-formatted message could be converted to synthesized speech, as is done by NWS weather alerts, for visually impaired persons. Accordingly, in the *Order*, we promote the delivery of audio, video, and text messages to persons with disabilities by requiring EAS Participants to accept CAP-formatted alerts and warnings, should CAP be adopted by FEMA.

21. While CAP is promising, however, it may not be the whole answer for making EAS alerts accessible to persons with disabilities, and it does not address the broader question of making emergency and public safety information available to persons with disabilities. For example, Section 79.2 of the Commission's rules requires video programming distributors to make the audio portion of emergency information accessible to persons with hearing disabilities using closed captioning or other methods of visual presentation. Video programming

distributors also must ensure that emergency information provided in the video portion of a regularly scheduled newscast, or a newscast that interrupts regular programming, is accessible to persons with visual disabilities through aural description in the main audio, such as open video description. Emergency information is defined as information about a current emergency that is intended to further the protection of life, health, safety, and property, i.e. critical details regarding the emergency and how to respond to the emergency.

22. We are issuing a *Further Notice of Proposed Rulemaking* to re-examine the best way to make EAS and other emergency information accessible to persons with disabilities. We will invite comment on: (1) Presentation of the audio feed in text format, and vice-versa; (2) making emergency information available to various devices commonly used by persons with disabilities; and (3) providing emergency messages in multiple formats to meet the needs of persons with disabilities.

23. *Serving non-English Speakers.* We also affirm our commitment that non-English speakers should have access to EAS alerts as soon as the simultaneous transmission of multilingual messages is practicable. We believe that the first step toward more effectively serving non-English speakers, consistent with the Secretary of Homeland Security's responsibility to enable alerting of ''those without an understanding of the English language'' is to require the use of CAP, conditional on its adoption by FEMA. Requiring EAS Participants to be able to receive CAP-formatted alerts will facilitate more accurate and detailed multilingual alerts. At the same time, we also expect that EAS participants will simultaneously transmit multilingual CAP-formatted messages by EAS Participants as soon as such transmission is practicable. For example, this could happen either as a result of the development of comprehensive, nation-wide Next Generation EAS under FEMA's auspices, or pursuant to the earlier development of CAP-based transmission systems at the state level per coordination between state planners and FEMA. This requirement will ensure that the initiator of any EAS alert has the technological capability to deliver simultaneously messages in English and any other language determined to be appropriate for a given alert.

24. The rules we adopt provide the groundwork for transmission of multilingual EAS alerts and warnings. CAP, however, may not be a complete answer for making EAS alerts available to non-English speakers, and is not a comprehensive solution for making general emergency and public safety information available to non-English speakers. Indeed, we believe that Petitioners' request is broader than the formal EAS structure and raises important questions about the availability of emergency information to the non-English speaking audience. We initiate today a Further Notice to seek additional comment on these proposals. Although we hope that the stakeholders will work together, under our auspices, to reach a resolution prior to the conclusion of our proceeding on these issues, we are prepared to issue an order addressing these issues within six months.

25. In order to begin focusing on these issues quickly, we direct the Public Safety and Homeland Security Bureau to convene a discussion (or a series of discussions) at the Commission among stakeholders as soon as possible, and to place a report describing the results in the public docket within 30 days of release of the *Order*.

Expanding the Base of EAS Participants

26. *Wireline Video Participation in EAS.* We agree with commenters that Wireline Video Providers should be considered Participants under our EAS rules. The EAS plays a critical role in providing vital public safety information. The long-term resilience of the EAS could be significantly increased by careful implementation that could better accommodate, and even harness, the innate flexibility of IP-based networks that can route around damaged nodes. Moreover, a viewer's reasonable expectation regarding the availability of alerts over television programming is identical, whether the programming is over-the-air broadcasting, cable, DBS, or a new wireline video service. By adopting a technologically neutral EAS obligation today, the Commission is enabling these emerging service providers to integrate EAS at an early developmental stage.

27. Under section 624(g) of the Act and the Commission's EAS regulations, providers of ''cable systems'' must participate in EAS. Section 624(g) of the Act provides that ''each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.'' The Commission imposed EAS regulations on cable operators pursuant to this mandate in 1994, concluding that cable ''is invaluable in the dissemination of information during emergencies.'' The term ''cable operator'' means a person ''who provides cable service over a cable system,'' including ''a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act * * * to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services.'' Thus, section 624(g) expressly authorizes the imposition of EAS requirements on Wireline Video Providers to the extent that they qualify as ''cable operators'' under the Act.

28. To the extent that Wireline Video Providers do not qualify as ''cable operators'' under the Act, we require that they participate in EAS pursuant to our Title I ancillary jurisdiction and in connection with our specific responsibilities under sections 624(g) and 706. As a general matter, the Commission has discretion to use ancillary jurisdiction when the Commission has Title I subject matter jurisdiction over the service and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various responsibilities.'' Wireline Video Providers fall within the scope of the Commission's jurisdiction because they provide ''interstate * * * communication by wire.'' At least some of their services involve transmission across state lines, meeting the definition of ''interstate communication,'' and they are ''wire communication,'' which is ''transmission of * * * pictures * * * and sounds * * * by aid of wire, cable, or other like connection.'' Thus, the Commission has subject matter jurisdiction over these services. We also find that imposing an EAS requirement is reasonably ancillary to the effective performance of our responsibilities. Wireline Video Providers' participation in the EAS will advance the animating purpose of section 624(g) by ensuring that their video subscribers have access to the same emergency information as broadcast and cable television viewers. Indeed, we believe that their EAS participation is necessary to preserve and advance the goals of section 624(g), as Wireline Video Providers offer competitive alternatives to the video programming available through broadcast and cable television, and are likely to reach increasingly large portions of the American public as they deploy their services. Moreover, requiring Wireline Video Providers to participate in EAS also will further our core public safety mission under Title I,

which requires us to take steps to ''promot[e] safety of life and property,'' and section 706, and is consistent with prior Commission actions. Accordingly, we conclude that we have ancillary jurisdiction to require even those Wireline Video Providers that may not be cable operators under the Act to participate in EAS.

29. As a policy matter, we believe that the reasonable expectations of viewers should guide our efforts to encourage the development of a more comprehensive EAS system. We reaffirm that our long-term goal is to incorporate as many communications technologies as possible into a comprehensive, flexible, and redundant system to deliver EAS alerts quickly to the largest number of consumers.

30. Wireline Video Providers should be subject to the same EAS requirements as providers of Digital Cable Systems. We therefore amend our EAS rules to specifically include Wireline Video Providers. Wireline Video Providers are EAS Participants, however, only to the extent they provide video services; our EAS rules do not impose mandatory EAS obligations on wireline telephone companies providing traditional landline telephone services at this time.

Wireless Participation in EAS

31. Because the WARN Act directs the Commission to initiate a rulemaking regarding the establishment of an alerting system for commercial mobile service (CMS) providers that voluntarily elect to transmit emergency alerts, and the schedule set by the WARN Act precludes initiation of such rulemaking until a later date, we do not address commercial wireless carrier participation in EAS in the *Order*.

State Level and Geographically Targeted EAS Alerts

32. *Receipt of State-Level Messages* We believe that voluntary participation by cable and broadcast EAS Participants in accommodating state and local level alerting in the existing EAS has been generally successful. Nevertheless, we conclude there are compelling policy reasons to order EAS Participants to receive CAP-formatted EAS alerts activated by state governors or their designees. First, we again note that EAS use to date has been overwhelmingly related to weather and state and local alerts. We also believe that states will be more inclined to deploy the necessary resources to upgrade to Next Generation EAS, including the ability to simultaneously transmit multiple and differentiated CAP-formatted messages, if the states have a particular—and FCC-enforceable—stake in the EAS during state and local emergencies. We conclude, therefore, that all EAS Participants within a state are required to be prepared to receive state-level messages delivered to the participant by the state's governor (or the governor's designee) within 180 days from the date FEMA adopts CAP, so long as such delivery is explicitly described in a state EAS plan that is submitted to and approved by the Commission. In addition, we believe that other public officials may, in appropriate circumstances, activate EAS alerts. We seek comment in the attached Further NPRM about which officials should be permitted to activate EAS alerts and under what circumstances.

33. We recognize that requiring EAS Participants to receive emergency alerts directly from state political subdivisions, such as counties and cities, could be unduly complex and costly and would create the potential for some alerts to reach those who may not be affected by a particular emergency. Accordingly, we will only require EAS Participants to receive CAP-formatted EAS messages delivered to them by a state governor (or the governor's designee), or by FEMA (or its designee) on behalf of a state. We find that requiring EAS Participants to receive CAP-formatted EAS messages delivered by a state governor of any state in which they provide service falls within the scope of our Title I subject matter jurisdiction as well as our public interest authority to grant licenses for radio communication under Title III of the Act. ''[P]romoting safety of life and property through the use of wire and radio communication'' is a core mission of the FCC under Title I, Title III authorizes the FCC to grant radio licenses in the public interest, and the Commission is authorized to ''make such rules and regulations * * * as may be necessary in the execution of its functions,'' and to ''[m]ake such rules and regulations * * * not inconsistent with law, as may be necessary to carry out the provisions of this Act * * *.'' Developing and maintaining an effective, reliable, integrated, flexible, and comprehensive EAS system is a fundamental and longstanding FCC mission under the Communications Act.

34. Requiring EAS Participants to receive state-level alerts delivered pursuant to, and upon adoption by FEMA of CAP advances the Commission's policy objectives and serves the public interest by ensuring the ability of state governors to disseminate emergency information via EAS facilities. State governments play an essential role in providing emergency information to the public. The Commission's EAS regulations always have accounted for the importance of state-level alerts, but we now conclude that mandating receipt of state-level EAS messages will further our core public safety mission.

35. Exercising ancillary jurisdiction to require EAS participants to receive messages delivered to them by a state governor also furthers other statutory goals. Section 615 requires the Commission to ''encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs,'' while section 706 grants specific, communications-related powers to the President in time of war or national emergency. In such event, the President may, for example, take control of, or suspend or amend the rules and regulations applicable to, any or all cable and radio and television broadcast stations within the Commission's jurisdiction. Commission authority to regulate participation by cable systems in the emergency alerting process stems primarily from section 624(g) of the Act. That provision requires the Commission to ensure that cable viewers are afforded the same access to emergency communications as broadcast viewers and listeners. Additionally, the Americans with Disabilities Act strives to make all facets of our society fully accessible to individuals with disabilities. Finally, in light of the President's 2006 *Executive Order,* which directs the Commission to adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system, we note that our action today is consistent with that Presidential directive as well as with emergency preparedness goals expressed by Congress in other statutes.

36. Accordingly, we reject as without merit NAB's argument that the Commission lacks authority to mandate participation in state-level EAS alerts. NAB points out that section 706 concerns Presidential communications, and the executive orders delegating authority to the FCC pursuant to section 706 largely concern the development of a national-level communications capability to serve Presidential needs, rather than state or local needs. Section 706 is not the only source of FCC authority to impose EAS requirements, however. The Commission's core public safety mission under Title I is not limited to national emergencies, nor is our Title III authority to grant radio licenses in the public interest so limited. Indeed, the *Executive Order* broadly affirms that ''[i]t is the policy of

the United States to have an effective, reliable, integrated, flexible, and *comprehensive system* to alert and warn the American people * * *, *taking appropriate account of* * * * *all levels of government in our Federal system* * * *.'' We could not ensure a ''comprehensive'' system without taking state governments into account. The FCC's past reliance on voluntary state-level EAS participation reflects a policy judgment, rather than a lack of authority, as NAB suggests.

37. NAB also argues that the Commission cannot rely on section 1 because requiring state-level EAS participation implicates programming content. The only support that NAB offers for this argument is the D.C. Circuit's statement in *Motion Picture Ass'n of America, Inc.* v. *FCC* that ''[o]ne of the reasons why section 1 has not been construed to allow the FCC to regulate programming content is because such regulations invariably raise First Amendment issues.'' NAB's reliance on this statement is misplaced. In the *MPAA* decision, the Commission was relying on Title I alone to regulate programming content in the face of a statutory provision regarding video descriptions that the court interpreted as limiting FCC authority. Here, in contrast, we rely on Title III as well as Title I to mandate the carriage of emergency information. Requiring the carriage of emergency information also is a longstanding function of the Commission. NAB fails to explain how requiring state-level EAS participation implicates programming content in a manner different from the longstanding requirement of national-level EAS participation, which NAB does not challenge.

38. In addition to the source of our legal authority to require participation in state-level EAS, we also must consider the facilities and architecture of the various EAS Participants in determining how best to implement a state-level EAS requirement. We note that the existing EAS network architecture is based on a broadcast model of localized receipt and distribution by radio, television, and cable service providers using ENDEC units situated throughout their service areas. We recognize that certain other EAS Participants may have organized their service infrastructure on a national, not regional, basis. For example, the Commission recognized in the *First Report and Order* that SDARS ''is by nature a national service and that as a result the development of methods to ensure receipt of state and local alerts by SDARS licensees is likely to be challenging.'' Requiring these carriers to establish monitoring capability in every state where they do business could prove to be unduly burdensome. Satellite carriers, in particular, have expressed a need for a single receive point for EAS alerts that would complement their organizational structure.

39. We do not require SDARs and DBS providers to accommodate state-level alerts given the national nature of their broadcast area. We note that SDARS and DBS cannot accommodate state-level alerts at present and might not be able to do so even after the full implementation of Next Generation EAS. In the United States, there are two licensed SDARS operators: Sirius Satellite Radio, Inc. (''Sirius'') and XM Radio, Inc. (''XM''). Both licensees transmit their programming via satellite directly to subscribers' receivers on a nationwide basis. In the *First Report and Order*, the Commission required the SDARS licensees to transmit national level EAS messages on all channels on their systems. In the *Further NPRM*, the Commission sought comment on how technologies like SDARS, which are designed to receive and deliver national programming, could deliver state and local alerts. Although some potential, developing functionalities may enable SDARS to support geo-targeting, such as state-level alerts, in the future, XM expressed concerns that its current system cannot support geographical targeting of even state-level alerts to affected subscribers. XM states that there are two impediments for SDARS to transmit state or local alerts—a satellite radio provider does not have an ENDEC unit located in every area where a local alert might originate, and a satellite radio provider's programming reaches subscribers nationwide. Because SDARS providers face technical difficulties in distributing even state-level alerts to their subscribers, we will not at this time require SDARS to provide geographically-targeted alerts, including state-level alerts.

40. Likewise, DBS satellite service providers, such as EchoStar (Dish Network) and DIRECTV, transmit video programming on a nationwide basis to subscribers over a wide area. DIRECTV and PanAmSat state that currently DBS systems cannot distribute state and local alerts without interrupting programming across a wide area. DIRECTV also states that its system currently does not have the capability to receive, sort, and disseminate state and local EAS messages only to the subscribers in the affected areas. Because DBS providers also face technical difficulties in distributing alerts to portions of their subscribers, we will not at this time require DBS to provide geographically-targeted alerts, including state-level alerts.

Geographically Targeted Alerts at Less Than State-Level

41. Although we are limiting the requirement that EAS Participants receive state level messages to messages received from state governors (or their designees) pursuant to CAP, we do not seek to restrict state use of the EAS network to only emergency messages that require statewide distribution. A governor could, for example, determine that certain emergencies warrant use of the EAS network to deliver a geographically-targeted alert to particular regions. Employing CAP will facilitate such geo-targeting, at least in connection with some technologies. Accordingly, we also require EAS Participants to deliver emergency alerts to areas smaller than a state. In order to transmit such targeted alerts, however, EAS Participants must be provided with CAP-formatted messages containing appropriate codes. Further, EAS Participants may comply with this requirement by utilizing geographic-specific alerts such as subscripts utilizing localized information. Expanding our state-level alert transmission requirement to include geographically targeted alerts will afford each state governor the ability to determine the types and geographic scope of emergency alerts provided to residents via the EAS network, in coordination with the ability of EAS Participants in his or her state to accommodate such alerts. Importantly, however, in adopting this requirement, we note that terrestrial broadcasters may not presently have the technical ability to restrict delivery of a targeted alert solely to the affected portion of their service area. This type of restriction is not necessary in order to comply with the requirements established in this Order.

Coordination With State and Local Governments

42. For nearly half a century, the Commission has encouraged state and local participation in the EAS (and its predecessor, the EBS), and we take additional steps in the Order that will ensure the effective and efficient participation by states and local jurisdictions in the EAS. We note that the SECCs, industry participants, and state and local officials have worked closely with Commission staff to ensure the efficacy of the EAS, resulting in EAS plans for all 50 states. The Commission has reviewed and approved EAS plans for a number of states, and continues to

have a cooperative, highly effective relationship with the SECCs.

43. As a result of the actions we take today to ensure that state governors have a robust and reliable EAS network at their disposal, states will likely need to revise their EAS plans to specify how and what types of EAS alerts they will transmit to EAS Participants. Such information will enable the Commission, FEMA, affected EAS Participants, and other interested parties to ensure that these plans are implemented successfully. While we do not dictate specific plan revisions other than those set forth herein for implementing mandatory state-level alerts, we encourage states to include information regarding redundant distribution of EAS alerts. Since state EAS plans will be required to contain information concerning our new requirement that EAS Participants must distribute EAS alerts delivered by state governors, plans should specify how the governor's CAP-formatted EAS messages will be transmitted to all EAS Participants who provide services in the state. We also encourage states to submit an electronic data file specifying monitoring assignments and the paths for the Emergency Action Notification (EAN) from the NP to each station in their plans. We believe that such an electronic submission would facilitate the Commission's revision of the EAS ''Map Book'' required under the EAS rules. We also urge states to provide detailed information identifying the monitored and monitoring broadcast stations.

44. In order to ensure that the Commission has sufficient notice of revised EAS plans, we will require state and local entities to file modified plans with the Commission at least 90 days before the effective date of any revision to their EAS plans or their EAS designations. In addition, we will require state and local entities to annually confirm their plans and designations.

45. We also agree with commenters and the specific recommendation of the Independent Panel that the Commission should proactively provide EAS training to interested parties. We agree with Contra Costa that education to public safety and citizens is critical in making any type of infrastructure successful. We also believe that the Alaska Broadcasters Association and the State Emergency Communications Committee (Joint Parties) in our EAS proceeding are correct in recommending that training be provided for emergency managers as well as subject broadcasters, cable systems and other media operators. We take particular note of the argument of the Ohio Association of Broadcasters that proper training (and retraining) is a critical component of EAS, and supports training programs at the local level. OAB believes the Federal government also should be responsible for providing guidance to ensure that an appropriate minimum level of training of emergency management personnel is provided. According to OAB, a national training standard would ensure that training of persons who administer and activate EAS is uniform throughout local communities, states, and among federal, state and local government agencies. Accordingly, we hereby instruct the Commission's Public Safety and Homeland Security Bureau to coordinate with FEMA on the appropriate requirements for and resources to conduct EAS training programs to ensure states and other interested parties can implement the Next Generation EAS.

Assessing EAS Operation

46. In the *Further Notice*, we asked whether performance standards are necessary to ensure that Next Generation technologies deliver alerts to the American public in a timely and accurate fashion. We noted that proposed standards could include the length of time it takes to receive a message and the accuracy of the message.

47. It is vital that the EAS operates as designed in an emergency. We intend to examine several potential mechanisms to ensure that is the case. In the *Further Notice of Proposed Rulemaking*, we seek comment on several options, including: (1) Additional testing; (2) station certification of compliance; and (3) assessments of EAS performance after an alert has been triggered. We will revisit the issue of performance standards if it appears that they are warranted.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

48. This *Second Report and Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It will be submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA.

B. Congressional Review Act

49. The Commission will send a copy of this Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (''CRA''), *see* 5 U.S.C. 801(a)(1)(A).

II. Final Regulatory Flexibility Analysis

50. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Further Notice of Proposed Rulemaking in EB Docket 04–296 (*''First Report and Order and FNPRM''*). The Commission sought written public comment on the proposals in the *EAS NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

Need for, and Objectives of, the Rules

51. The *Second Report and Order* adopts rules that set the framework for a Next Generation EAS. In the Order, we take the following actions to establish service requirements for a Next Generation EAS, and establish schedules by which industry segments must transition to the new system: (1) Require EAS Participants to configure their systems to accept EAS alerts formatted in the Common Alerting Protocol (''CAP'') format no later than 180 days after FEMA announces the technical standards and requirements for CAP-formatted messages; (2) require EAS Participants to configure their systems to authenticate and validate EAS alerts formatted in the CAP format no later than 180 days after FEMA announces the standards for authentication and validation of CAP-formatted messages; (3) require EAS Participants to receive and transmit state-level messages delivered to the Participant by the state's governor (or the governor's designee) within 180 days from the date FEMA adopts CAP, so long as such delivery is explicitly described in a state EAS plan that is submitted to and approved by the Commission; (4) require wireline common carriers that provide video programming service to receive and distribute EAS messages; and (5) delegate authority to the Chief, Public Safety and Homeland Security Bureau to perform actions that will facilitate proper implementation of our rules and resolution of issues as set forth herein.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

52. There were no comments filed that specifically addressed the IRFA.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

53. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA

generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

54. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

55. *Television Broadcasting.* The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $13 million or less in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (''LPTV''). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

56. *Radio Stations.* The revised rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95 percent) of 11,410 commercial radio stations have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

57. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution, which consists of all such firms having $12.5 million or less in annual receipts. According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999. Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

58. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. We have estimated that there were 1,065 cable operators who qualified as small cable system operators at the end of 2005. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,065 small entity cable system operators that may be affected by the rules and policies proposed herein.

59. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, (''Act'') also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,065. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Act.

60. *Multipoint Distribution Systems.* The established rules apply to Multipoint Distribution Systems (''MDS'') operated as part of a wireless cable system. The Commission has defined ''small entity'' for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

61. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other

subscription programming, which includes all such companies generating $13.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, we estimate that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

62. *Instructional Television Fixed Service.* The established rules would also apply to Instructional Television Fixed Service (''ITFS'') facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 are small businesses and may be affected by the established rules.

63. *Incumbent Local Exchange Carriers (''LECs'').* We have included small incumbent LECs in this present IRFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

64. *Competitive (LECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed rules.

65. *Satellite Telecommunications and Other Telecommunications.* The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

66. The second category—*Other Telecommunications*—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

67. In this Second Report and Order, we have taken steps to advance our public safety mission by establishing a framework for the Next Generation of EAS and by expanding the base of EAS participants to include wireline telephone companies that provide programming in competition with broadcast and cable television.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

68. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

69. The *First Report and Order and FNPRM* sought comment on a number of alternatives to the imposition of EAS obligations on the digital communications technologies discussed in this Second Report and Order that are increasingly being used by the American public. The Commission has considered each of the alternatives and in this Second Report and Order imposes minimal regulation on small

entities to the extent consistent with our goal of advancing our public safety mission by adopting rules that expand the reach of EAS. The affected service providers have generally expressed their willingness to cooperate in a national warning system, and we anticipate that this addition of new providers to EAS can be accomplished swiftly and smoothly.

70. The benefits of requiring additional carriers to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that is able to provide effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. Most commenters contend, and we agree, that the EAS should remain an important component of any future alert and warning system. Further, in most cases, the digital platforms affected by this Second Report and Order either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with minimal cost.

71. Likewise, most commenters agreed that CAP is best-suited to deliver Next Generation EAS. By requiring EAS participants to adopt CAP, we believe that this will best serve our goal of protecting the life and property of all Americans. We acknowledge that compliance with the rules adopted in the order may impose cost burdens on small entities. However, given the great public interest benefits of the rules, we find that the public interest benefits outweigh the economic burdens, if any. In the Initial Regulatory Flexibility Analysis, we sought comment on these rules and no commenter proposed an alternative version that would serve these benefits while lessening the economic burdens. Accordingly, we find that we have discharged our duty to consider burdens imposed on small entities.

72. *Report to Congress:* The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

III. Ordering Clauses

73. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706 and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, that the Second Report and Order in EB Docket No. 04–296 is adopted, and that part 11 of the Commission's rules, 47 CFR part 11, is amended. The Order shall become effective December 3, 2007, or 60 days after Congress's receipt of a Congressional Review Act report, whichever is later, except that new or modified information collection requirements will not become effective prior to OMB approval.

74. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Section 11.1 is revised to read as follows:

§ 11.1 Purpose.

This part contains rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. The rules in this part describe the required technical standards and operational procedures of the EAS for analog AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireline video systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities. The EAS may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.

■ 3. Add § 11.2 to read as follows:

§ 11.2 Definitions.

The definitions of terms used in part 11 are:

(a) *Primary Entry Point (PEP) System.* The PEP system is a nationwide network of broadcast stations and other entities connected with government activation points. It is used to distribute the EAN, EAT, and EAS national test messages and other EAS messages. FEMA has designated 34 of the nation's largest radio broadcast stations as PEPs. The PEPs are designated to receive the Presidential alert from FEMA and distribute it to local stations.

(b) *Local Primary One (LP–1).* The LP–1 is a radio station that acts as a key EAS monitoring source. Each LP–1 station must monitor its regional PEP station and a back-up source for Presidential messages.

(c) *EAS Participants.* Entities required under the Commission's rules to comply with EAS rules, *e.g.*, analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems.

(d) *Wireline Video System.* The system of a wireline common carrier used to provide video programming service.

(e) *Participating National (PN).* PN stations are broadcast stations that transmit EAS National, state, or local EAS messages to the public.

(f) *National Primary (NP).* Stations that are the primary entry point for Presidential messages delivered by FEMA. These stations are responsible for broadcasting a Presidential alert to the public and to State Primary stations within their broadcast range.

(g) *State Primary (SP).* Stations that are the entry point for State messages, which can originate from the Governor or a designated representative.

■ 4. Section 11.11 is amended by revising paragraph (a) and (e) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; analog television broadcast stations including

Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in 47 CFR 25.701(a) (including certain Ku-band Fixed-Satellite Service Direct to Home providers); SDARS, as defined in 47 CFR 25.201; participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates listed above and in the following tables:

ANALOG AND DIGITAL BROADCAST STATIONS

EAS equipment requirement	AM & FM class A TV [4]	Digital AM & FM	TV	DTV	FM class D [1]		LPTV [2]	LPFM [3]
Two-tone encoder [5]	Y [6]	Y 12/31/06	Y	Y 12/31/06	N	N	N	Y
EAS decoder	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
EAS encoder	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	N	N	N	Y
Audio message	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
Video message	N/A	N/A	Y 1/1/97	Y 12/31/06	N/A	Y 1/1/97	N/A	Y

[1] Effective December 31, 2006, digital FM Class D stations have the same requirements.
[2] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment. Effective December 31, 2006, digital LPTV stations have the same requirements.
[3] LPFM stations must install a decoder within one year after the FCC publishes in the **Federal Register** a public notice indicating that at least one decoder has been certified by the FCC. Effective December 31, 2006, digital LPFM stations have the same requirements.
[4] Effective December 31, 2006, digital Class A TV stations have the same requirements.
[5] Effective July 1, 1995, the two-tone signal must be 8–25 seconds.
[6] Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.

Analog Cable Systems

[A. Analog cable systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002, or comply with the following EAS requirements. All other analog cable systems must comply with B.]

SYSTEM SIZE AND EFFECTIVE DATES

B. EAS equipment requirement	≥5,000 but < 10,000 subscribers	≥10,000 subscribers	<5,000 subscribers
Two-tone signal from storage device [1]	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS decoder [3]	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder [2]	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels, [3] Audio and Video EAS message on at least one channel.	N	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.
[2] Analog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.
[3] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.
Note: Programmed channels do not include channels used for the transmission of data such as interactive games.

Wireless Cable Systems (BRS/EBS STATIONS)

[A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.]

SYSTEM SIZE AND EFFECTIVE DATES

B. EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS decoder	Y 10/1/02	Y 10/1/02

SYSTEM SIZE AND EFFECTIVE DATES—Continued

B. EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS encoder [1] [2]	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels [3]	Y 10/1/02	N
Video interrupt and audio alert message on all channels; [4] Audio and Video EAS message on at least one channel	N	Y 10/1/02

[1] The two-tone signal is used only to provide an audio alert to an audience prior to an EAS emergency message or to the Required Monthly Test (RMT) under § 11.61(a)(1). The two-tone signal must be 8–25 seconds in duration.
[2] Wireless cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.
[3] All wireless cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.
[4] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.
Note: Programmed channels do not include channels used for the transmission of data services such as Internet.

Digital Cable Systems and Wireline Video Systems

[A. Digital cable systems and Wireline Video Systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing by December 31, 2006, or comply with the following EAS requirements. All other digital cable systems and Wireline Video Systems must comply with B.]

SYSTEM SIZE AND EFFECTIVE DATES

B. EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
Two-tone signal from storage device [1]	Y 12/31/06	Y 12/31/06
EAS decoder [3]	Y 12/31/06	Y 12/31/06
EAS encoder [2]	Y 12/31/06	Y 12/31/06
Audio and Video EAS Message on all channels [4]	Y 12/31/06	N
Video interrupt and audio alert message on all channels [3] Audio and Video EAS message on at least one channel	N	Y 12/31/06

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.
[2] Digital cable systems and Wireline Video Systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.
[3] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.
[4] All digital cable systems and/Wireline Video Systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.
Note: Programmed channels do not include channels used for the transmission of data such as interactive games or the transmission of data services such as Internet.

SDARS AND DBS

EAS equipment requirement	SDARS	DBS
Two-tone signal [1]	Y 12/31/06	Y 5/31/07
EAS decoder	Y 12/31/06	Y 5/31/07
EAS encoder	Y 12/31/06	Y 5/31/07
Audio message on all channels [2]	Y 12/31/06	Y 5/31/07
Video message on all channels [2]	N/A	Y 5/31/07

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.
[2] All SDARS and DBS providers may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages or by any other method that ensures that viewers of all channels receive the EAS message.

* * * * *

(e) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Public Safety and Homeland Security Bureau or their State Emergency Communications Committee for information and guidance.

■ 5. Section 11.21 is revised to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR). State and local plans contain unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS). The plans must be reviewed and approved by the Chief, Public Safety and Homeland Security Bureau, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

(a) The State plan contains procedures for State emergency management and other State officials, the NWS, and EAS Participants' personnel to transmit emergency information to the public

during a State emergency using the EAS, including mandatory messages initiated by a state governor or his/her designee. The State plan must specify how state-level and geographically targeted EAS messages initiated by a state governor or his/her designee will be transmitted to all EAS Participants who provide services in the state, and must include specific and detailed information describing how such messages will be aggregated, designated as mandatory, and delivered to EAS Participants. State EAS plans should include a data table, in computer readable form, clearly showing monitoring assignments and the specific primary and backup path for the emergency action notification (''EAN'') from the PEP to each station in the plan.

(b) The Local Area plan contains procedures for local officials or the NWS to transmit emergency information to the public during a local emergency using the EAS. Local plans may be a part of the State plan. A Local Area is a geographical area of contiguous communities or counties that may include more than one state.

(c) The FCC Mapbook is based on the above plans. It organizes all broadcast stations and cable systems according to their State, EAS Local Area, and EAS designation.

■ 6. Section 11.47 is amended by revising paragraph (b) to read as follows:

§ 11.47 Optional use of other communications methods and systems.

* * * * *

(b) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Public Safety and Homeland Security Bureau or their State Emergency Communications Committee for information and guidance.

§ 11.51 EAS code and Attention Signal Transmission requirements.

■ 7. Section 11.51 is amended by revising paragraphs (g) introductory text and (h) introductory text to read as follows:

* * * * *

(g) Analog cable systems and digital cable systems with fewer than 5,000 subscribers per headend and wireline video systems and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

* * * * *

(h) Analog cable systems and digital cable systems with 10,000 or more subscribers; analog cable and digital cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and wireline video systems and wireless cable systems with 5,000 or more subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

* * * * *

■ 8. Section 11.55 is amended by revising paragraph (a) introductory text to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) All EAS Participants within a state (excepting SDARs and DBS providers) must receive and transmit state-level and geographically targeted EAS messages, as aggregated and delivered by the state governor or his/her designee, or by FEMA on behalf of such state governor, upon approval by the Commission of an applicable state plan providing for delivery of such alerts no sooner than 180 days after adoption of CAP by FEMA. Examples of natural emergencies which may warrant activation are: Tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc.

Man-made emergencies may include: toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

* * * * *

■ 9. Add § 11.56 to read as follows:

§ 11.56 EAS Participants receive CAP-formatted alerts

Notwithstanding anything herein to the contrary, all EAS Participants must be able to receive CAP-formatted EAS alerts no later than 180 days after FEMA publishes the technical standards and requirements for such FEMA transmissions.

[FR Doc. E7–21137 Filed 11–1–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA 2007–0010]

RIN 2127–AK03

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions.

SUMMARY: In a final rule published in August 2006, NHTSA amended its safety standard on occupant crash protection to establish the same 56 km/h (35 mph) maximum speed for frontal barrier crash tests using belted 5th percentile adult female test dummies as it had previously adopted for tests using belted 50th percentile adult male dummies. The agency adopted the amendment to help improve crash protection for small statured occupants. In this document, in response to petitions for reconsideration of that rule, we are adjusting the phase-in requirements to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, *i.e.*, beginning on September 1, 2008.

We are also making technical corrections regarding special phase-in provisions for small volume manufacturers included in the August 2006 rule, as well as in several other regulations.

DATES: *Effective Date:* This final rule is effective January 2, 2008.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by December 17, 2007.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section V; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Carla Cuentas, Office of Crashworthiness Standards (Telephone: 202–366–1740) (Fax: 202–366–2739).

For legal issues, you may call Mr. Edward Glancy, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection,* requires passenger cars and other light vehicles to be equipped with seat belts and frontal air bags to prevent or mitigate the effects of occupant interaction with the vehicle's interior in a crash. While air bags have proven to be very effective in increasing the number of lives saved in moderate to high speed frontal crashes, they have on occasion been implicated in fatalities where vehicle occupants were in close proximity to the air bag when it deployed. The majority of these fatalities occurred in vehicles produced in the 1990s.

On May 12, 2000, NHTSA published in the **Federal Register** (65 FR 30690) its advanced air bag final rule. This final rule required that future air bags be designed to create less risk of serious air bag-induced injuries. The original advanced air bag rule established two phase-in implementation schedules for the new requirements.

Under Phase I, which began September 1, 2003 and was completed on September 1, 2006, NHTSA required vehicle manufacturers to install advanced air bag systems that reduce the risk of air bag-induced injuries (particularly to young children and small adult drivers), while improving the frontal crash protection provided by air bag systems to occupants of different sizes. NHTSA specified the use of both 50th percentile adult male and 5th percentile adult female dummies for the standard's crash tests.[1] Phase I required vehicles to be certified as passing the performance requirements for both of these dummies, while unbelted, in a 32 km/h (20 mph) to 40 km/h (25 mph) rigid barrier test (unbelted rigid barrier test requirements), and performance requirements for the same two dummies, while belted, in a rigid barrier crash test with a maximum test speed of 48 km/h (30 mph) (belted rigid barrier test requirements).

Under Phase II, which begins to be phased-in on September 1, 2007, vehicles must be certified as passing the belted rigid barrier performance requirements at speeds up to and including 56 km/h (35 mph) using just the 50th percentile adult male dummy.

In the original advanced air bag rulemaking, we stated that we did not propose including the 5th percentile adult female dummy in the second phase-in requirement because we ''had sparse information on the practicability of such a requirement.'' We also stated that the agency would undergo testing to examine this issue further and that we anticipated ''proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 35 mph, beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.'' (60 FR 20680, 30690; and 66 FR 65376).

On August 6, 2003, we published a notice of proposed rulemaking (NPRM) (68 FR 46539) to increase the test speed for the belted rigid barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph). We proposed the same phase-in schedule as the one used in Phase II beginning September 1, 2007. In this NPRM, we tentatively concluded that the results of the tests conducted by NHTSA indicated both a need for and the feasibility of extending the 56 km/h (35 mph) maximum speed for the rigid barrier test to include the 5th percentile adult female dummy.

On August 31, 2006, NHTSA published a final rule (71 FR 57168) increasing the maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy from 48 km/h (30 mph) to 56 km/h (35 mph), the same speed we had previously adopted for 50th percentile adult male dummies. After considering the public's comments, the agency continued to believe that the test data obtained indicated that FMVSS No. 208 should require the same level of high speed crash protection for small statured occupants as for larger occupants.

We noted that the final rule was essentially the same as the proposal, except for the timing of the phase-in. Under the final rule, the new requirement was phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but with a beginning date two years later, *i.e.*, September 1, 2009. We stated that the additional leadtime would provide manufacturers the time needed to meet design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

We stated that given that this phase-in was two years later, and that many vehicles already comply with the new requirement, we were not including advance credits as part of this phase-in, although carryover credits earned during the phase-in would be allowed.

The implementation schedule for the new requirement was as follows:

—35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009;
—65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits from vehicles built after September 1, 2009.
—100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits from vehicles built after September 1, 2009.
—All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009) have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012.

Consistent with our usual policy concerning multi-stage vehicles, multi-stage manufacturers and alterers may defer compliance with the new requirement until September 1, 2013.

II. Petitions for Reconsideration

The agency received petitions for reconsideration of the August 2006 final rule from the following vehicle manufacturers and manufacturer organization: Porsche Cars North America, Inc. (Porsche), Volkswagen of America, Inc. (VW), Mitsubishi Motors R&D of America (Mitsubishi), and Alliance of Automobile Manufacturers (Alliance).

All four of the petitioners asked that we reconsider our decision not to include advance credits as part of the phase-in.

[1] The advanced air bag rule also specified the use of 1-year-old infant dummies, 3- and 6-year old child dummies, and 5th percentile adult female dummies in its test requirements to minimize the risk to infants, children, and other occupants from injuries and deaths caused by air bags.

Two of the petitioners, Alliance and VW, requested a technical correction in the regulatory text of the standard regarding a special phase-in provision for small volume manufacturers.

The details of the requests of the petitioners, and our response, are provided below.

III. Request for Technical Corrections

The agency received a letter, dated March 29, 2007, from VW, requesting technical corrections in the regulatory text of FMVSS No. 301, *Fuel System Integrity,* and Part 585, *Phase-in Reporting Requirements.* While the letter addresses different regulatory requirements than the petitions for reconsideration discussed above, it requests technical corrections regarding special phase-in provisions for small volume manufacturers that are essentially the same. We are therefore addressing these technical corrections in this document.

IV. Final Rule; Agency Response to Petitions

As discussed below, in response to petitions for reconsideration of the August 2006 final rule increasing the speed of the frontal barrier test requirement using belted 5th percentile adult female dummies, we are adjusting the phase-in requirements to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, *i.e.*, beginning on September 1, 2008.

We are also making technical corrections regarding special phase-in provisions for small volume manufacturers included in the August 2006 rule, as well as in several other regulations.

A. Advance Credits

As noted above, the August 2006 final rule did not include advance credits as part of the phase-in of the 56 km/h (35 mph) barrier crash test requirements using belted 5th percentile adult female dummies, although carryover credits earned during the phase-in were permitted.

The lack of advance credits for early compliance prior to the beginning of the phase-in period differed from the allowance for early credits provided in the original advanced air bag rule (See FMVSS No. 208 S14.1.2), which permitted credits for vehicles produced on or after June 12, 2000, for the purposes of complying with the advanced air bag requirements for which the phase-in began September 1, 2003. Also, the original advanced air bag rule provided for advance carry-forward credits for vehicles produced on or after September 1, 2006, for the purposes of the 35 mph crash test requirements using the 50th percentile male dummy that will begin to be phased in on September 1, 2007 (See FMVSS No. 208 S14.3.2).

The agency stated that it was not including advance credits as part of the phase-in of the 56 km/h (35 mph) requirements using the 5th percentile adult female dummy given that this phase-in was two years later, and that many vehicles already comply with the new requirement.

As indicated earlier, the Alliance, Mitsubishi, Porsche and VW asked that we reconsider our decision not to include advance credits as part of the phase-in.

Petitions

The Alliance asked us to permit manufacturers to earn and apply advance carry-forward credits for vehicles that can be certified in compliance with the new requirements two years in advance of the regulatory requirements. It stated that this is an unusually unstable era in the U.S. automotive industry, and that in the current economy the uncertainties associated with making product plans and compliance projections for a phased-in rule are very high, creating the need for maximum flexibility in designing new regulatory requirements.

That organization stated that it recognizes that providing advance carry-forward credits for early compliance with safety standards is unusual. It noted, however, that advance carry-forward credits for early compliance were included in the original advanced air bag rule, including for early compliance with the 56 km/h (35 mph) crash test requirements using the 50th percentile adult male dummy that will begin to be phased in on September 1, 2007. It also stated that providing advance credits would be consistent with Congressional intent in enacting the advanced air bag requirements, as the Transportation Equity Act for the 21st Century requirements for advanced air bags had provided for such credits.

The Alliance questioned the agency's statement that many vehicles already comply with the new rules, arguing that the rulemaking record shows mixed test results. It stated that the record showed that 12 vehicle models ''already comply'' with the new rules, while 6 did not. The Alliance also stated that none of the 12 models were certified to the advanced air bag requirements, so it is unclear whether any would comply with an adequate margin of compliance after an advanced air bag is installed, given the design and performance tradeoffs that are required for advanced air bags. The Alliance also noted that the agency had conducted additional testing of five more vehicle models that were certified to the advanced air bag requirements, and all met the 35 mph crash test requirement with the 5th percentile female dummy, although one had no compliance margin. The Alliance argued that the record reflects the difficulties of redesigning air bags to meet the competing demands of protecting large adult males, both belted and unbelted; protecting small females, both belted and unbelted; and protecting children, both restrained and unrestrained. According to the Alliance, adding the 35 mph barrier crash test for the 5th percentile female dummy complicates this design task even further, emphasizing the need for flexibility during the phase-in.

The Alliance argued that advance carry-forward credits are positive for safety, because they recognize and reward manufacturers that are able to certify compliance with the new requirements earlier than they otherwise would have to. It also stated that the availability of advance carry-forward credits acts as an incentive to manufacturers to make the commitment to assuring compliance that is necessary to earn and claim advance carry-forward credits. It also stated that at the end of the phase-in, the same number of vehicles will be certified as compliant whether or not the advance carry-forward credits were made available—but the advance carry-forward credits would incentivize manufacturers to bring more vehicles into compliance earlier.

According to the Alliance, given the dynamic nature of the U.S. auto industry, despite manufacturers' best efforts to project compliant fleets during the phase-in, it may become critically necessary to use advance carry-forward credits to achieve compliance, if sales for certain models fall short of projections and as manufacturers respond to fluctuations in market demand.

For all of these reasons, the Alliance requested that the agency permit manufacturers to earn and apply advance carry-forward credits for vehicles that can be certified in compliance with the new requirements two years in advance of the regulatory requirements.

VW, Mitsubishi and Porsche made requests similar to that of the Alliance. Like the Alliance, VW requested that manufacturers be permitted to earn advance credits for vehicles that are

produced beginning September 1, 2007, i.e., two years in advance of the regulatory requirements.

Mitsubishi requested that manufacturers be permitted to earn advance credits for one production year prior to the phase-in, i.e., beginning September 1, 2008. Porsche requested that the agency either provide manufacturers the opportunity to generate advance credits for vehicles built one year prior to the start of the phase-in schedule, or reduce the compliance requirement for the first year of the phase-in from 35 percent to 20 percent. Mitsubishi and Porsche noted that the final rule was issued three years after the proposal and argued that even with the two-year later phase-in, advance credits are still needed. Mitsubishi and Porsche each provided information subject to claims of confidentiality in support of their petitions.

Agency Response

After carefully considering the requests of the petitioners, we have decided to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new 56 km/h (35 mph) barrier requirements using the belted 5th percentile adult female dummy one year in advance of the regulatory requirements, i.e., beginning on September 1, 2008.

As the Alliance noted in its petition, providing advance carry-forward credits for early compliance with safety standards is unusual but not without precedent. We note that a provision for advance credits can act as an incentive for early introduction of new safety technologies and provide additional flexibility for manufacturers while resulting in the same number of vehicles certified to meet new requirements prior to full, 100 percent implementation. On the other hand, we also recognize that advance credits can reduce the number of vehicles that need to be upgraded to comply with a new requirement during the actual production years covered by a phase-in, particularly in situations where many vehicles may already comply with the requirement.

In the NPRM to increase the test speed of the barrier requirements using the belted 5th percentile adult female dummy, we proposed to permit manufacturers to earn advance credits for one year prior to the beginning of the phase-in. For the final rule, we did not include this provision. We believed that the provision was unnecessary, given that we adopted a phase-in that began two years later than we had proposed.

On reconsideration, we have decided to include a provision permitting manufacturers to earn advance credits for one year prior to the beginning of the phase-in. After considering the comments, we are persuaded that this additional flexibility is appropriate. This one-year period for earning advance credits is consistent with the Phase II phase-in, as well as the NPRM for this Phase III requirement. Among other things, this provision will provide flexibility to manufacturers in dealing with uncertainty in projecting sales volumes of different models as they plan to meet the percentage phase-in requirements.

We are not, however, providing the longer, two-year period requested by the Alliance and VW. Neither petitioner provided data or specific arguments demonstrating the need for a period as long as two years or that a one-year period is not sufficient.

The issues raised by the Alliance about the need for flexibility were of a general nature, and we believe that those concerns are addressed by the one-year period we are adopting.

VW cited the fact that the period for advance credits was longer for Phase I, and a statement by the agency in the original advanced air bag rulemaking that we were only allowing credits to be earned for vehicles manufactured one year prior to the initiation of the Phase II requirements because we believed manufacturers should first direct their efforts toward full implementation of Phase I, particularly the risk reduction requirements.

While we agree that the Phase I implementation is not affected by Phase III, we decline to adopt a period longer than one year. As indicated above, a provision for advance credits can act as an incentive for early introduction of new safety technologies and provide additional flexibility for manufacturers, but can also reduce the number of vehicles that need to be upgraded to comply with a new requirement during the actual production years covered by a phase-in, particularly in situations where many vehicles may already comply with the requirement. In balancing these considerations, we conclude that a one-year period for earning advance credits for Phase III is appropriate.

We note that we do not know how many vehicles already comply with the requirements. However, as discussed in the preamble to the final rule, and noted by the Alliance, the agency conducted testing of five vehicle models that were certified to the advanced air bag requirements, and all met the 56 km/h (35 mph) crash test requirement with the 5th percentile female dummy, although one had no compliance margin. This suggests that a significant number of vehicles already comply.

We also note that the primary purpose of a provision for advance credits is to provide an incentive to encourage manufacturers to develop and introduce new technologies earlier than they would otherwise be required. While manufacturers needed to develop and introduce new technologies to meet the risk reduction requirements of the Phase I advance air bag requirements, we believe that was generally not the case for either Phase II or Phase III. This is another reason not to provide a longer period for advance credits.

We note that we are making conforming changes to part 585, *Phase-in Reporting Requirements,* to reflect the provision for advance credits.

B. Phase-In Exclusion for Small Volume Manufacturers

In the preamble of the August 2006 final rule, NHTSA stated that manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance until September 1, 2012. 71 FR 51770. This is consistent with similar provisions in FMVSS No. 208 S14.1(d) (related to Phase I) and S14.3(d) (related to Phase II) in which the limit of 5,000 vehicles applies toward production for the U.S. market and not worldwide production. However, in the regulatory text of the August 2006 final rule, S14.6(d) read: ''Vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles world-wide annually are not subject to the requirements of S14.6.''

In their petitions for reconsideration, the Alliance and VW pointed out this discrepancy and their belief that the agency intended to implement this provision as described in the preamble.

We confirm that the regulatory text in S14.6(d) was incorrect and are revising it to be consistent with the preamble, and with the regulatory text at S14.1(d) and S14.3(d). It will now read: ''Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to the requirements of S14.6.''

As indicated above, we received a letter, dated March 29, 2007, from VW, requesting technical corrections in the regulatory text of FMVSS No. 301, *Fuel System Integrity,* and part 585, *Phase-in Reporting Requirements*. While the request addresses different regulatory requirements than the petitions for reconsideration discussed above, it requests technical corrections regarding special phase-in provisions for small

volume manufacturers that are essentially the same. We are therefore addressing these issues in this final rule.[2]

Specifically, with respect to the phase-in of inboard rear seat lap/shoulder requirements of FMVSS No. 208, VW noted a similar discrepancy between the preamble/regulatory text of FMVSS No. 208 (which are consistent) and the relevant regulatory text of Part 585. Also, with respect to the phase-in of upgraded rear crash test requirements in FMVSS No. 301, VW noted a similar discrepancy between the preamble and the regulatory text in FMVSS No. 301, and the lack of a corresponding provision in Part 585.

In each of these instances, the agency intended, as indicated in the preamble, to apply the different compliance date to manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market each year. We are therefore making technical corrections along the lines requested by VW.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866.

This rule amends the agency's August 2006 final rule that upgraded FMVSS No. 208 to increase the maximum belted frontal barrier crash test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy. This is the same test speed as is specified for the 50th percentile adult male dummy. The August 2006 final rule was considered significant because of public interest. However, as explained below, today's amendments are not significant.

As discussed in the preamble to the August 2006 final rule, the agency estimated that the rule will prevent 2–4 fatalities and reduce 2 MAIS 2–5 non-fatal injuries. The total net cost could range from $0.0 to $9.0 million (2004 economics). The agency estimated the total cost of that rule will most likely be $4.5 million.

This rule amends the phase-in requirements of the August 2006 final rule to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, i.e., beginning on September 1, 2008. It does not change the number of vehicles that must be certified to the new requirements, nor does it change the dates or percentage requirements of the phase-in. Accordingly, while the rule provides some additional flexibility for manufacturers, it does not affect costs and benefits in a manner that is quantifiable. Moreover, for the same reason, it is not necessary for the agency to do a separate regulatory evaluation.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). NHTSA has determined that this action will not have a significant economic impact on a substantial number of small entities.

In the preamble to the August 2006 final rule, NHTSA made a determination that that rule will not have a significant economic impact on a substantial number of small entities. Today's amendments make a small adjustment in the phase-in requirements of that rule in a manner that provides greater flexibility. Since these amendments will not significantly affect small entities, this rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed the final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not 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.''

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year ($120,700,000 as adjusted for inflation with base year of 1995).

Because this final rule will not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

F. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney

[2] We note that Lance Tunick separately identified to the agency the discrepancies related to the FMVSS No. 208 requirement increasing the test speed using belted 5th percentile adult female dummies and also the requirement related to FMVSS No. 301.

General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule contains a ''collection of information'' as that term is defined by OMB at 5 CFR 1320. As a result of this final rule, NHTSA proposes to amend an existing collection of information as follows:

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Part 585—Advanced Air Bag Phase-In Reporting Requirements.

Type of Request—Revision of a Currently Approved Collection of Information.

OMB Clearance No.—2127–0599.

Form Number—This collection of information will not use any standard forms.

Total Annual Responses—21.

Total Annual Burden Hours—1,260.

Total Annual Burden Dollars—$0.

Requested Expiration Date of Clearance—At present, Clearance No. 2127–0599 is scheduled to expire on April 30, 2010. NHTSA will ask for one more extension of this collection of information—through October 31, 2012.

Summary of the Collection of Information

In the ''Rulemaking Analyses and Notices'' section of the August 31, 2006 final rule, NHTSA discussed the Paperwork Reduction Act consequences of the collection of information (*See* 71 FR at 51776–51777). As a result of today's final rule, NHTSA proposes to amend its description of the collection of information as follows. As earlier described, in today's final rule, we are providing a year in which manufacturers can earn advance credits for compliance with the 56 km/h (35 mph) requirements using the 5th percentile adult female dummy.

Phase-in Reporting

The phase-in of the 56 km/h (35 mph) maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy is similar to the one for the test using the 50th percentile adult male dummy, except that it is two years later. Under today's rule, manufacturers will be able to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, i.e., beginning on September 1, 2008.

The implementation schedule for the phase-in of the higher speed requirement using the 5th percentile adult female dummy, as revised by today's rule, is as follows:

—Advance credits for each manufacturer's light vehicles certified in compliance with the new higher speed requirement that were manufactured during the production year beginning on September 1, 2008 (with the phase-in report to NHTSA due on October 31, 2009).

—35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009, with an allowance of carryover credits (with the phase-in report to NHTSA due on October 31, 2010).

—65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits (with the phase-in report to NHTSA due on October 31, 2011).

—100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits (with the phase-in report to NHTSA due on October 31, 2012).

—All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009), have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012.

Description of the Need for the Use of the Information

NHTSA needs this information to ensure that vehicle manufacturers are certifying their applicable vehicles as meeting the new belted barrier test using the 5th percentile female. NHTSA will use this information to determine whether a manufacturer has complied with the amended requirements of FMVSS No. 208 during the phase-in period.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 21 vehicle manufacturers will submit the required information.

For each report, the manufacturer will provide, in addition to its identity, several numerical items of information. The information includes:

(a) Total number of vehicles manufactured for sale during the preceding production year,

(b) Total number of vehicles manufactured during the production year that meet the regulatory requirements, and

(c) Information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

At present, OMB Clearance No. 2127–0599 gives NHTSA approval to collect 1,281 burden hours a year from industry, or 61 hours from each of 21 manufacturers. This figure of 61 hours represents the burden hours that would result if reports for two separate but related phase-ins were due the same year, *e.g.*, both the higher speed test requirement using 50th percentile adult male test dummies and the higher speed test requirement using the 5th percentile adult female dummies. In the event that manufacturers must provide only one phase-in report in a given year, the collection of information burden would be 60 hours per manufacturer, or a total collection of information burden on industry of 1,260 hours.

Approved Clearance Through April 30, 2010

For the report due on October 31, 2008 (covering vehicles manufactured during the production year beginning on September 1, 2007), since only the phase-in report for the 50th percentile adult male test dummies must be provided, NHTSA estimates that each manufacturer will incur 60 burden hours per year, or a total collection of information burden on industry of 1,260 hours.

For the report due on October 31, 2009 (covering vehicles manufactured during the production year beginning on September 1, 2008), this will be the first year for which manufacturers may need to report on vehicles certified in compliance with the higher speed 5th percentile adult female dummy

requirements, if they choose to earn advance credits. In addition, for all vehicle manufacturers, the phase-in reports for the 50th percentile adult male dummies must continue to be provided.

Thus, assuming all manufacturers provide both reports, NHTSA estimates that each manufacturer will incur 61 burden hours a year, for a total of 1,281 hours a year. This estimate is based on the fact that the reporting format for the test requirements using both the 50th percentile adult male test dummies and the 5th percentile adult female test dummies is identical. The data collection will involve only computer tabulation (using the same reporting format) and manufacturers will provide the information to NHTSA in an electronic (as opposed to paper) format. The data will cover the same types of vehicles for both upgrades of the belted barrier test.

Anticipated Request for Clearance for October 31, 2010 Through October 31, 2012

The first year of the phase-in for the higher speed test requirement using 5th percentile adult female dummies covers the production period from September 1, 2009, through August 31, 2010. The report will be due by October 31, 2010, a time after OMB Clearance No. 2127–0599 expires on April 10, 2010.

According to the phase-in schedule specified in the final rule of August 31, 2006, the three year period from October 31, 2009, through October 31, 2012, will include one year (covering the production period from September 1, 2009, through August 31, 2010) when manufacturers will report on both the last year of the phase-in for the higher speed test requirement using 50th percentile adult male test dummies and the first year of the higher speed test requirement using 5th percentile adult female dummies. For this one year, there will be an increase of one burden hour, resulting in a total of 61 burden hours per manufacturer, or a total burden of 1,281 hours on industry. This estimate is based on the fact that the reporting format for the test requirements using both the 50th percentile adult male test dummies and the 5th percentile adult female test dummies is identical. The data collection will involve only computer tabulation (using the same reporting format) and manufacturers will provide the information to NHTSA in an electronic (as opposed to paper) format. The data will cover the same types of vehicles for both upgrades of the belted barrier test.

There are 0 hours of recordkeeping burdens resulting from the collection of information.

There are no capital or start-up costs as a result of this collection. Manufacturers could collect and tabulate the information by using existing equipment. Thus, there would be no additional costs to respondents or recordkeepers.

Because the scope of this collection of information differs from that described in the August 31, 2006 final rule, NHTSA invites comment on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit any comments to the NHTSA Docket Number referenced in the heading of this notice or to: Ms. Lori Summers, Office of Rulemaking, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Summers' telephone number is: (202) 366–1740. Comments are due within 60 days of the date of publication of this document in the **Federal Register**.

H. Executive Order 13045

Executive Order 13045 [3] applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rule is not economically significant, and it will not have a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Today's amendments do not use technical standards but merely adjust the phase-in requirements adopted in the August 2006 final rule.

J. Privacy Act

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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477 at 19478).

[3] 62 FR 19885, April 23, 1997.

List of Subjects in 49 CFR Parts 571 and 585

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 and 585 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by revising S14.6(d) and S14.6.2 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S14.6 * * *

* * * * *

(d) Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to the requirements of S14.6.

* * * * *

S14.6.2 *Calculation of complying vehicles.*

(a) For the purposes of complying with S14.6.1.1, a manufacturer may count a vehicle if it is manufactured on or after September 1, 2008, but before September 1, 2010.

(b) For purposes of complying with S14.6.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2008, but before September 1, 2011, and

(2) Is not counted toward compliance with S14.6.1.1.

(c) For purposes of complying with S14.6.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2008, but before September 1, 2012, and

(2) Is not counted toward compliance with S14.6.1.1 or S14.6.1.2.

* * * * *

■ 3. Section 571.301 is amended by revising S6.2(c) to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S6.2 * * *

(c) *Small volume manufacturers.* Notwithstanding S6.2(b) of this standard, vehicles manufactured on or after September 1, 2004 and before September 1, 2008 by a manufacturer that produces fewer than 5,000 vehicles annually for sale in the United States may meet the requirements of S6.2(a). Vehicles manufactured on or after September 1, 2008 by small volume manufacturers must meet the requirements of S6.2(b).

* * * * *

PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 4. The authority citation for part 585 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 5. Section 585.15 is amended by adding (a)(3) and (c)(3) to read as follows:

§ 585.15 Reporting requirements.

(a) * * *

(3) Within 60 days after the end of the production year ending August 31, 2009, each manufacturer choosing to certify vehicles manufactured during that production year as complying with phase three of the advanced air bag requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

* * * * *

(c) * * *

(3) With respect to the report identified in section 585.15(a)(3), each manufacturer shall report the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which the advanced air bag requirements the vehicles are certified.

* * * * *

■ 6. Section 585.16 is revised to read as follows:

§ 585.16 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(c) until December 31, 2011. Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(d)(2) until December 31, 2013.

■ 7. Section 585.23 is revised to read as follows:

§ 585.23 Applicability.

This subpart applies to manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg or less. However, this subpart does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter. In addition, this subpart does not apply to manufacturers that produce fewer than 5,000 vehicles annually for sale in the United States.

■ 8. Section 585.43 is revised to read as follows:

§ 585.43 Applicability.

This subpart applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 or less. However, this subpart does not apply to manufacturers that produce fewer than 5,000 vehicles annually for sale in the United States.

Issued: October 29, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. E7–21600 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 72, No. 212
Friday, November 2, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29317; Directorate Identifier 2007–CE–079–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172 and 182 Series 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 Model 172 and 182 series airplanes that are equipped with the BRS–172 and BRS–182 Parachute System. This proposed AD would require the replacement of the pick-up collar support and nylon screws for the BRS–172 and BRS–182 Parachute System. This proposed AD results from notification by Ballistic Recovery Systems, Inc. (BRS) that the pick-up collar assembly may prematurely move off the launch tube and adversely affect rocket trajectory during deployment. We are proposing this AD to prevent premature separation of the collar. This condition could result in the parachute failing to successfully deploy.

DATES: We must receive comments on this proposed AD by December 3, 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.
- *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.
- *Fax:* (202) 493–2251.
- *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 Ballistic Recovery Systems, Inc., 300 Airport Road, South Saint Paul, MN 55075–3551; telephone: (651) 457–7491; fax: (651) 457–8651.

FOR FURTHER INFORMATION CONTACT: Gregory Michalik, Senior Aerospace Engineer, FAA, 2300 East Devon Avenue, Des Plaines, Illinois, 60018; telephone: (847) 294–7135; fax: (847) 294–7834; e-mail: *gregory.michalik@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–2007–29317; Directorate Identifier 2007–CE–079–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 been notified by Ballistic Recovery Systems, Inc. of a concern similar to that which prompted AD 2007–14–03, dated August 16, 2007, on the Cirrus Airplane Parachute System (CAPS), where the parachute failed to successfully deploy. Testing indicates that the force of the rocket ignition and rocket blast may prematurely break the nylon pick up collar/support screws. When functioning properly the screws should not break until impacted by a flange at the rocket base. A prematurely separated collar/support may bind on the rocket as it slides down toward the flange at the base of the rocket. This may alter the direction of the rocket.

This condition, if not corrected, could result in the parachute failing to successfully deploy upon activation.

Relevant Service Information

We have reviewed Ballistic Recovery Systems, Inc. Service Bulletins SB 07–01, dated June 8, 2007; and SB 07–02, dated June 8, 2007. The service information describes procedures for the replacement of the pick-up collar support and screws.

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 the replacement of the pick-up collar support and screws for the BRS–172 and BRS–182 Parachute System.

The BRS–172 and BRS–182 Parachute System could also be installed on Cessna 150 series airplanes and Symphony Aircraft Industries Models OMF–100–160 and SA 160 airplanes. The corrective actions proposed in this NPRM are specific to the Cessna 172 and 182 series airplanes. We are evaluating these other BRS installations and, based on this evaluation, may consider additional rulemaking on this subject.

Costs of Compliance

We estimate that this proposed AD would affect 54 airplanes in the U.S. registry.

We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	N/A	$80	$4,320

Note: BRS will provide warranty credit to the extent noted in Ballistic Recovery Systems, Inc. Service Bulletins SB 07–01 and SB 07–02, both dated June 8, 2007.

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–2007–29317; Directorate Identifier 2007–CE–079–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by December 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models, all serial numbers, certificated in any category, that are equipped with:

(1) BRS–172 Parachute System installed via Supplemental Type Certificate (STC) SA01679CH, or

(2) BRS–182 Parachute System installed via STC SA01999CH.

Cessna 172 models	Cessna 182 models
172	182
172A	182A
172B	182B
172C	182C
172D	182D
172E	182E
172F (USAF T–41A)	182F
172G	182G
172H (USAF T–41A)	182H
172I	182J
172K	182K
172L	182L
172M	182M
172N	182N
172P	182P
172Q	182Q
172R	182R
172S	182S
	182T
	R182
	T182
	TR182
	T182T

Unsafe Condition

(d) This AD results from notification by Ballistic Recovery Systems, Inc. (BRS) that the pick-up collar assembly may prematurely move off the launch tube and adversely affect rocket trajectory during deployment. We are issuing this AD to prevent premature separation of the collar. This condition could result in the parachute failing to successfully deploy.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
Remove and replace the pick-up collar support and two retaining screws.	Within the next 25 hours time-in-service after the effective date of this AD.	(i) For Cessna Model 172 airplanes follow BRS SB 07–01, dated June 8, 2007. (ii) For Cessna Model 182 airplanes, follow BRS SB 07–02, dated June 8, 2007.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office, 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: Gregory Michalik, Senior Aerospace Engineer, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7135; fax: (847) 294–7834; e-mail: *gregory.michalik@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 Ballistic Recovery Systems, Inc., 300 Airport Road, South Saint Paul, MN 55075–3551; telephone: (651) 457–7491; fax: (651) 457–8651. 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–2007–29317; Directorate Identifier 2007–CE–079–AD.

Issued in Kansas City, Missouri, on October 26, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21571 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 616

RIN 1205–AB51

Federal-State Unemployment Compensation Program (UC); Interstate Arrangement for Combining Employment and Wages

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: The U.S. Department of Labor (Department) is proposing to amend its regulations governing combined-wage claims (CWC) filed under the Federal-State UC program. Most significantly, the Department proposes to amend the definition of ''paying State.'' The Department also invites comments on all issues relating to the CWC arrangement and its governing regulations.

DATES: To be ensured consideration, comments must be submitted in writing on or before January 2, 2008.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB51, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Submit comments to Thomas Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Because of security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

- Hand Delivery/Courier: 200 Constitution Avenue, NW., Room N–5641.

The Department will post all comments received on *www.regulations.gov* without making any change to the comments, including any personal information provided. The *www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department recommends that commenters not include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become easily available to the public via the *www.regulations.gov* Web site. Comments submitted through *www.regulations.gov* will not include the e-mail address of the commenter unless the commenter chooses to include that information as part of their comment. It is the responsibility of the commenter to safeguard his or her information.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking: RIN 1205–AB51. If commenters transmit comments through the Internet and also submit a hard copy by mail, please indicate that it is a duplicate copy of the Internet transmission.

Docket: All comments will be available for public inspection and copying during normal business hours by contacting the Office of Policy Development and Research at (202) 693–3700. As noted above, the Department also will post all comments it receives on *www.regulations.gov.* This Federal eRulemaking portal is easily accessible to the public. The Department cautions the public to avoid providing personal information in your comments that you do not want to become public via the Internet, such as social security number, personal address, phone number, and e-mail address.

Copies of the proposed rule are available in alternative formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The proposed rule is available on the Internet at the Web address *http://www.doleta.gov.*

FOR FURTHER INFORMATION CONTACT: Jacqui Shoholm, Director of the Division of Policy, Legislation and Regulations, Office of Policy Development and Research, Employment and Training Administration, (202) 693–3700 (this is not a toll-free number) or 1–877–889–5627 (TTY), or *Shoholm.jacqui@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

General

Section 3304(a)(9)(B) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(9)(b)) requires each State, as a condition of participation in the Federal-State UC program, to participate in any arrangement specified by the Secretary of Labor for payment of UC on the basis of combining an individual's employment and wages in two or more States. A claim filed under this arrangement is a Combined Wage Claim or ''CWC.'' Section 3304(a)(9)(B), FUTA, is implemented at 20 CFR part 616. As explained in § 616.1, the purpose of the arrangement is to permit an unemployed worker with covered employment or wages in more than one State to combine all such employment and wages in one State, in order to qualify for benefits or to receive more benefits. Section 616.2 explains that, in accordance with section 3304(a)(9)(B), the arrangement was developed in consultation with the representative of the State UC agencies, currently known as the National Association of State Workforce Agencies (''NASWA'').

The arrangement provides at § 616.7(a) that any unemployed individual who had employment covered under the UC law of two or more States, whether or not he or she has earned sufficient wages to qualify for UC under one or more of them, may elect to file a CWC. Under § 616.6(e)(1), the ''paying State'' is the State in which the claimant files the CWC, if he or she qualifies for benefits under the UC law of that State on the basis of combined employment and wages. Section 616.6(e)(2) identifies the ''paying State'' when either the CWC claimant does not qualify for unemployment benefits under the UC law of the State in which he or she files the CWC or the claimant files a CWC in Canada.

Under § 616.8, the ''paying State'' assumes the responsibility for arranging the transfer of wages from other State(s) where wages were earned (that is, the ''transferring State,'' as defined at § 616.6(f)) during the ''paying State's'' base period (that is, the period during which wages earned are counted toward determining benefit eligibility and amount). In addition to making benefit payments to eligible individuals, the ''paying State'' also issues all determinations relating to eligibility for benefits based on its UC law. Section 616.9 explains the responsibilities of the transferring State to transfer the covered employment and wages of the CWC claimant to the ''paying State'' and reimburse the ''paying State'' for benefits based upon wages earned in the transferring State.

For the reasons explained below, the Department proposes to amend the definition of ''paying State'' in § 616.6(e) of 20 CFR, add a new paragraph (f) to

§ 616.7 requiring that where a State denies a CWC it must notify the claimant of the option of filing in another State, and make a conforming amendment to § 616.8(a) addressing the responsibilities of the ''paying State.'' The Department also proposes to delete as unnecessary § 616.5, which makes December 31, 1971, the effective date of the arrangement.

Reasons for Regulatory Change

The current regulation for determining the ''paying State'' for CWCs was issued in 1974 (39 FR 45215, December 31, 1974) to replace a more complicated test for determining the ''paying State.'' It was intended to speed payments to eligible claimants by streamlining a manual process which relied on mailing paper forms between States to determine which State would be the ''paying State.'' That system could take weeks or months to determine which State should be the ''paying State'' for a particular claim. The simple solution, adopted in 1974 (§ 616.6(e)(1)), makes the ''paying State'' the State in which the claimant filed the claim. This amendment made the ''paying State'' readily identifiable, and, because UC claims were filed in person in 1974, this amendment also was convenient for the claimant, who would be physically present in the State in which he or she filed the claim. Under § 616.9, all of the claimant's wages are to be transferred to this ''paying State,'' whose law governs the CWC under § 616.8. If the claimant does not qualify for benefits in the State in which he or she filed the claim, § 616.6(e)(2) applies.

The Department now proposes to amend the definition of ''paying State.'' Information-sharing technology now exists among States which allows for more immediate determinations of where wages have been earned. Therefore, it is no longer necessary to make the ''paying State'' the State in which the claimant chooses to file the CWC, as the current regulations do.

Permitting the claimant to choose the ''paying State'' led to an unintended consequence, forum shopping. Under the current definition, the ''paying State'' need not be a State in which the individual has covered wages. Rather, that definition makes the ''paying State'' any State in which the claimant files a CWC if the claimant qualifies for benefits in that State on the basis of combining his or her wages under that State's law. As a result, an individual may claim in a State with a higher weekly benefit amount (WBA) than exists in any of the States in which the claimant had covered employment. Forum shopping occurs because WBAs vary greatly among States. (For example, the maximum WBA in Mississippi is $210 compared with $575 (plus allowances for dependents) in Massachusetts.)

The Department believes that forum shopping is undesirable for several reasons. First, it may unfairly advantage claimants who worked in multiple States over those who worked in just one State by affording CWC claimants the choice of filing a UC claim in a State with a higher WBA. Second, ''forum shopping'' results in higher costs for the claimant's employers, because the claimant files a CWC in a State paying higher benefits, which are ultimately funded by those employers.

Moreover, forum shopping undermines the insurance principles of the Federal-State UC program. Under an insurance program, benefits are payable based on a specific plan. In the case of UC, benefits are payable under a State's plan for compensating unemployment. This plan balances premiums (in the form of employer contributions) with benefit outlays (in the form of payments to individuals), requiring that benefit rights and contribution rates be coordinated. CWCs are unique in that insured wages are necessarily combined under a single State's plan. However, the current § 616.6(e)(1) permits a CWC claimant to elect benefits under the UC law of a State in which he or she had no employment. This approach allows the claimant to choose a plan with the most favorable coverage even though the claimant otherwise has no coverage under that plan. Although the CWC arrangement cannot be amended to provide for the payment of benefits in accordance with the laws of two or more States, the proposed amendment to § 616.6(e) would require that the benefits be determined under the law of one State in which the claimant had insured base period wages. This result conforms more closely to the insurance principles of the program.

The proposed amendment to § 616.6(e) would to some extent limit benefit eligibility, because it would limit the determination of entitlement to a State in which the claimant had base period wages. Thus, under the proposed section, an individual who had base period wages in two or more States, but who is unable to qualify for benefits in any of these States, would be denied benefits. To the contrary, the current § 616.6(e) permits a claimant's entitlement to also be determined under a State law where he or she had no wages. Thus, under the current section, that claimant might be able to find another State under whose law he or she would qualify and file the CWC there. However, this scenario is likely to have been rare and the Department believes that this result is reasonable. It is consistent with the insurance principles that benefit rights be determined under the State law under which the claimant had employment and wages in the State's base period.

The Department considered a number of options for preventing forum shopping. The proposed rule provides the most practical and least complicated set of tests for determining the ''paying State'' and is also the least restrictive in allowing the claimant some choice in selecting that State. The Department considered using a ''majority of wages'' test; however, that test would require the State against which the claim was originally filed to obtain the wages from all States where the claimant earned wages and then determine where the majority of base period wages were located. Although information-sharing technology now exists among States allowing for more immediate determinations of where wages were earned, wages are not immediately or automatically entered into a State's wage data base; State practices vary widely in how wages are captured and entered into the State system. Therefore, many such preliminary determinations could be erroneous, requiring that the CWC be cancelled in one State and filed again in another State with a resulting overpayment in the first State. Also, alternative base periods are a complicating factor. It is possible the claimant would have the ''majority'' of wages under State A's regular base period, but also have the ''majority'' of wages under State B's alternative base period. Thus, the State against which the CWC was filed would need to complete a complex and cumbersome process to determine which State had the majority of wages. Should the ''majority'' State not be the State against which the claim was filed, the State against which the claim was filed would need to deny the claim and advise the claimant where to file. This process would create delays and confusion, and would be much more complex than allowing the claimant to file in any State where he or she earned wages. Those States would, contrary to the ''majority'' State, be readily identifiable.

The Department also considered redefining ''paying State'' as the State in which the individual was last employed. The Department values consistency in the treatment of claimants and believes that, to the extent possible, CWC claimants should be treated the same as non-CWC claimants. For a claimant with base period wages and employment in only

one State, the determination of entitlement will be based solely on his/her wages and employment during the base period. Similarly, the Department believes that, when a claimant has base period wages and employment in more than one State, the determination of entitlement should be based solely on his/her base period wages and employment in those States, rather than whether the claimant has wages with a non-base period employer in another State.

Additionally, there is difficulty in ensuring the accurate and timely identification of the most recent employer for UI purposes. Claimants do not always know the correct name of their last employer. Also, in some cases, wages are not required to be reported by employers until months after a claimant has been separated from employment. These more recent wages will not be available at the time of filing and would need to be requested by the State, which would be administratively cumbersome and possibly delay the initial payment of UC.

Accordingly, the proposed definition of ''paying State'' as any State in which the claimant earned base period wages would make that State readily identifiable without the need for complex procedures and determinations. It would not totally eliminate claimant choice, but still serve the purpose of preventing forum shopping.

For these reasons, the Department proposes to update the CWC regulations as follows to prevent forum shopping and conform them to the UC program's insurance principles.

II. Summary of the Proposed Rule

The proposed rule would amend the definition of ''paying State'' at § 616.6(e) to provide that the ''paying State'' is a ''single State against which the claimant files a Combined-Wage Claim,'' if—

(1) The claimant has wages and employment in the State's base period(s) (that is, the time period(s) during which the claimant's wages count toward eligibility for, and the amount of, UC); and

(2) the claimant qualifies for UC under the law of that State using combined wages and employment.

Under the proposed § 616.6(e), if a claimant had wages and employment in the base period(s) of State A and the base period(s) of State B, the claimant may elect either State A or State B, because the ''paying State'' must be a ''single'' State. Further, no State other than State A or State B could serve as the ''paying State,'' because the claimant had wages in the base period(s) of no other State.

Under § 616.6(i) of 20 CFR, ''base period'' is defined as the base period ''applicable under the unemployment compensation law of the paying State.'' Thus, the proposed rule would apply the elected ''paying State's'' definition of ''base period.'' If an individual had insufficient wages and employment to qualify under the elected ''paying State's'' regular base period, then that State's rules of monetary entitlement (including any provisions regarding alternative base periods) would govern. (Some States use an ''alternative base period'' in addition to the regular base period to afford a claimant with wages outside the regular base period an opportunity to qualify for benefits.) Thus, a claimant, who could not qualify under the regular base period, would be able to seek benefits under the elected ''paying State's'' alternative base period, if one existed.

The proposed definition at § 616.6(e) would replace the current § 616.6(e)(1) and § 616.6(e)(2). The current § 616.6(e)(2) addresses what happens if the claimant fails to qualify under the law of the State in which he or she filed a CWC, by providing that in that event the ''paying State'' is the ''State where the Combined-Wage Claimant was last employed in covered employment among the States in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages * * *.'' The Department proposes removing this provision because it would no longer be necessary. The proposed definition of ''paying State'' would permit a claimant whose CWC was denied to file another CWC in a second State where he or she had base period wages. At the time of claim filing, or shortly thereafter, the claimant's base period wage and earnings history is reviewed for accuracy with the claimant. Because current technology now permits State agency staff to view claimant wages and eligibility criteria for other States, where they find such wages, they are able to provide prompt notice to the claimant of all claim filing options.

If that second State denied the CWC, the claimant could file in a third State where he or she had wages, and so on. Thus, where a claimant failed to qualify under the law of the State in which he or she filed the CWC, the claimant could file again in another State where he or she had wages. The proposed rule would add a new paragraph (f) to § 616.7 requiring the denying State to inform the claimant of this option to file again elsewhere.

It should also be noted that the current § 616.6(e)(2) provides that if a CWC is filed in Canada, then the ''paying State'' is the ''State where the Combined-Wage Claimant was last employed in covered employment among the States in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages * * *.'' The preamble of the 1974 rule (39 FR 45215–16) explained that it referenced Canada to acknowledge that while Canada could not be a ''paying State,'' claims may be filed in Canada against a State of the United States under the Interstate Benefit Payment Plan (IBPP). That Plan provides for a State, or Canada, helping a claimant file a UC claim against another State. In eliminating the current § 616.6(e)(2), the proposed rule would eliminate the reference to Canada. However, that reference is unnecessary since, as the 1974 rule noted, Canada cannot be a ''paying State.'' Further, the CWC regulations do not implement the IBPP and the current regulations do not, in any event, explicitly indicate that Canada is a party to it. In removing that reference, the Department does not intend to signal that Canada is not a party to the IBPP.

The proposal also includes a conforming amendment to § 616.8(a), which sets forth the responsibilities of the ''paying State'' regarding the transfer of employment and wages and the payment of benefits. One requirement in this section is that the ''paying State'' must, with an exception not relevant to the Department's proposed amendment, apply its own law to CWC determinations, even if the claimant had no covered wages in the ''paying State.'' The Department's proposed amendment to the definition of ''paying State'' ensures that there always will be covered wages in a ''paying State.'' Therefore, since the reference to a claimant having no covered wages in the ''paying State'' would no longer be relevant and would contradict the Department's purpose in amending the regulations, the Department proposes to eliminate it.

Lastly, the Department proposes to delete the effective date provision of the CWC arrangement because it is no longer needed.

Request for Comments

The Department sets forth in this NPRM a proposal to modernize the CWC system by amending the definition of ''paying State'' and amending other regulatory provisions to take into account the amended definition. The Department is interested in receiving comments on its proposed amendments

to Part 616, as well as alternative proposals for preventing forum shopping. Additionally, since the CWC arrangement has been in existence for over thirty-five years without change to its basic structure, the Department requests comments on the desirability of amending any of its provisions at Part 616.

III. Administrative Provisions

Executive Order 12866

This proposed rule is not economically significant. Under Executive Order 12866, a rule is economically significant if it materially alters the budgetary impact of entitlements, grants, user fees, or loan programs; has an annual effect on the economy of $100 million or more; or adversely affects the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. The Department has determined that this proposed rule is not economically significant under the Executive Order because it will not have an economic impact of $100 million or more on the State agencies or the economy.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), the Department of Labor is required to submit any information collection requirements to the Office of Management and Budget (OMB) for review and approval. 44 U.S.C. 3501 *et seq.* This proposed rule does not impose any new requirements or modification of the existing requirements on the States that have not already been approved by OMB for collection. Therefore, the Department has determined that this proposed rule does not contain a new information collection requiring it to submit a paperwork package to OMB.

Executive Order 13132: Federalism

Executive Order 13132 at section 6 requires federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

Further, section 3304(a)(9)(B), FUTA, requires consultation with the State agencies in developing the CWC arrangement. Section 616.2 of the CWC regulations also provides that for purposes of ''such consultation in its formulation and any future amendment the Secretary recognizes, as agents of the State agencies, the duly designated representatives of the NASWA.''

Consultation has occurred on an informal basis with the States through NASWA. The Department intends to consult with the UI Committee or any other representative(s) of the States selected by the NASWA, during the 60-day comment period for this proposed rule.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Under the Act, a federal agency must determine whether a regulation proposes a federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department has determined that this proposed rule does not create any unfunded mandates because it will not significantly increase aggregate costs of the CWC arrangement. The effect of this proposal is to preclude forum shopping and tie UC eligibility more closely to the insurance principle of the Federal-State UC program, and it does not create additional entitlements. This proposed modification does not add an additional burden on States with respect to claim processing because it does not alter the States' delivery of claim filing services.

Effect on Family Life

The Department certifies that this proposed rule has been assessed according to section 654 of Pub. L. 105–277 for its effect on family well-being. This provision protects the stability of family life, including marital relationships, financial status of families, and parental rights.

The Department concludes that this proposed rule will not adversely affect the well-being of the nation's families. This proposed rule's change in the definition of ''paying State'' will more closely tie CWC eligibility to the insurance principle underlying the Federal-State UC program without affecting an individual's ability to file a CWC. The Department also intends that the proposed rule will eliminate the practice of forum shopping that has occurred under the current CWC arrangement. The proposed change maintains consistency and equity in the treatment of claimants across all program areas. Therefore, the Department certifies that this proposed rule does not adversely impact family well-being.

Regulatory Flexibility Act / SBREFA

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification according to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule ''will not * * * have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5). Therefore, the definition of the term ''small entity'' does not include States.

This proposed rule describes procedures governing State administration of the CWC arrangement under the federal-State UC program, which does not extend to small governmental jurisdictions. Therefore, the Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities and, as a result, no regulatory flexibility analysis is required.

In addition, the Department certifies that this proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Under section 804 of SBREFA, a major rule is one that is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. Because this proposed rule is not an economically significant rule under Executive Order 12866, the Department certifies that it also is not a major rule under SBREFA.

List of Subjects in 20 CFR Part 616

Labor, and Unemployment compensation.

Words of Issuance

For the reasons stated in the preamble, the Department proposes to amend 20 CFR part 616 as set forth below:

PART 616—INTERSTATE ARRANGEMENT FOR COMBINING EMPLOYMENT AND WAGES

1. The authority citation for 20 CFR part 616 is revised to read as follows:

Authority: 26 U.S.C. 3304(a)(9)(B); Secretary's Order No. 3–2007, April 3, 2007 (72 FR 15907).

§ 616.5 [Removed]

2. Remove § 616.5.

3. Revise paragraph (e) of § 616.6 to read as follows:

§ 616.6 Definitions.

* * * * *

(e) *Paying State.* A single State against which the claimant files a Combined-Wage Claim, if the claimant has wages and employment in that State's base period(s) and the claimant qualifies for unemployment benefits under the unemployment compensation law of that State using combined wages and employment.

* * * * *

4. Add paragraph (f) to § 616.7 to read as follows:

§ 617.7 Election to file a Combined-Wage Claim.

* * * * *

(f) If a State denies a Combined-Wage Claim, it must inform the claimant of the option to file in another State in which the State finds that claimant has wages and employment during that State's base period(s).

§ 616.8 [Amended]

5. In § 616.8(a) remove the words '', even if the Combined-Wage Claimant has no earnings in covered employment in that State''.

Signed at Washington, DC, this 29th day of October 2007.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E7–21513 Filed 11–1–07; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

RIN 0910–ZA30

[Docket No. 2006N–0168]

Food Labeling: Revision of Reference Values and Mandatory Nutrients

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing this advance notice of proposed rulemaking (ANPRM) to request comment on what new reference values the agency should use to calculate the percent daily value (DV) in the Nutrition Facts and Supplement Facts labels and what factors the agency should consider in establishing such new reference values. In addition, FDA requests comments on whether it should require that certain nutrients be added or removed from the Nutrition Facts and Supplement Facts labels. Comments on what factors should be considered to update the agency's reference values will inform any FDA rulemaking that may result from this ANPRM.

DATES: Submit written or electronic comments by January 31, 2008.

ADDRESSES: You may submit comments, identified by Docket No. 2006N–0168, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paula R. Trumbo, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2579, or e-mail: *Paula.Trumbo@fda.hhs.gov*.

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Appendix A Acronyms Used in This Document

Appendix B Examples of Nutrition Facts and Supplement Facts Labels

I. Background[1]

On November 8, 1990, the Nutrition Labeling and Education Act (NLEA) of 1990 (Public Law No. 101–535) was signed into law (the 1990 amendments) amending the Federal Food, Drug, and Cosmetic Act (the act). The 1990 amendments made the most significant changes in the act and had a direct bearing on FDA's revision of nutrition labeling in 1993. The 1990 amendments added section 403(q) (21 U.S.C. 403(q)) to the act which specified, in part, that: (1) With certain exceptions, a food is to be considered misbranded unless its label or labeling bears nutrition labeling; (2) certain nutrients and food components are to be included in

[1]A list of the acronyms cited in this ANPRM are defined in Appendix A.

nutrition labeling, although the Secretary of Health and Human Services can add or delete nutrients by regulation if it is found necessary to assist consumers in maintaining healthy dietary practices; (3) nutrition labeling is to be provided for the most frequently consumed varieties of raw produce (fruits and vegetables) and raw fish according to voluntary guidelines or, if necessary, regulations; (4) a simplified nutrition label is to be used when the food contains insignificant amounts of most nutrients; and (5) FDA is to develop regulations governing labeling of foods to which section 411 of the act (21 U.S.C. 350) applies (i.e., vitamin and minerals).

In response to the NLEA, FDA, in 1993, issued several rules to modify how nutrition information is presented on food labels. When the agency issued those rules to modify the nutrition label information, it considered the diet and health information that was current at that time, including the National Academy of Sciences (NAS) Recommended Dietary Allowances (RDAs) (Refs. 1 to 3), the NAS Diet and Health Report (Ref. 4), the Surgeon General's Report on Nutrition and Health (Ref. 5), and the 1990 Dietary Guidelines for Americans (Ref. 6). New information has since become available on nutrient values that the agency believes may impact what nutrients it should consider requiring to be listed on the food label and what nutrient values it should use as a basis for the DVs on the food label. The new information includes revisions to the Dietary Guidelines for Americans (Ref. 7), the Institute of Medicine's (IOM's) published reports on the Dietary Reference Intakes (DRIs) that update recommendations for the intake of vitamins, minerals, and macronutrients (Refs. 8 to 14), the IOM report on the application of the DRIs (Ref. 15), and the IOM report on ''Guiding Principles for Nutrition Labeling and Fortification'' that provides recommendations on the use of the new DRIs in nutrition labeling (Ref. 16). The latter reports stimulated extensive discussion in the scientific community (e.g. at nutrition and food science conferences and in publications (Refs. 17 to 19); FDA and the IOM recognize that the approach to setting a DV in the labeling report (Ref. 16) represents a new approach that requires evaluation. At the IOM's 2007 workshop on ''The Development of DRI's 1994–2004: Lessons Learned and New Challenges,'' there was discussion about the limitations of the framework that was used to set the DRIs, as well as recommendations for future consideration. For all of these reasons, FDA finds it important to seek comment on the recommendations made in these reports (Refs. 7 to 16). In addition, the agency is considering changes to the food label in more recently published ANPRMs concerning prominence of calories and the labeling of *trans* fats. The agency discusses, below, the 1993 rules on food labeling, these ANPRMs, and publications and reports available since 1993, to provide background for the questions the agency is asking in this ANPRM related to a future proposed rule to update the presentation of nutrients and content of nutrient values on food labels.

A. Development of Current DVs

In the final rule on Food Labeling; Reference Daily Intakes and Daily Reference Values (the 1993 RDI/DRV final rule) (58 FR 2206, January 6, 1993), FDA amended its regulations to establish two sets of label reference values: Reference Daily Intakes (RDIs) and Daily Reference Values (DRVs) for use in declaring the nutrient content of a food on its label or labeling. These two reference values were used to establish a single set of label reference values known as the DVs, which were intended to assist consumers in both understanding the relative significance of nutritional information in the context of a total daily diet and in comparing the nutritional values of food products.

1. RDIs

In the **Federal Register** of July 19, 1990 (55 FR 29476), FDA proposed to replace the U.S. Recommended Daily Allowances (U.S. RDAs) as the reference values for certain vitamins and minerals used in nutrition labeling of foods with updated and expanded reference values (the 1990 proposal). The U.S. RDAs set in 1973 were based primarily on the NAS 1968 RDA values for vitamins and minerals (Ref. 1). However, the U.S. RDAs for certain vitamins and minerals for which no RDA had been identified (biotin, pantothenic acid, copper, and zinc) were based on information cited in the NAS's ''Recommended Dietary Allowances,'' 7th edition (Ref. 1). The NAS RDAs were updated in 1974 and 1980, and again in 1989 along with revised values for the listing known as ''Estimated Safe and Adequate Daily Dietary Intakes'' (ESADDIs).[2] In 1990, FDA decided that it needed to update the U.S. RDA values, in part, due to the revisions of the 1989 NAS RDA and ESADDI values. FDA proposed to redesignate ''U.S. RDAs'' as ''RDIs,''[3] and to establish five sets of RDIs for different developmental groups, i.e., adults and children 4 or more years of age (excluding pregnant or lactating women), children less than 4 years of age, infants, pregnant women, and lactating women. FDA also proposed using a population-weighted average of the relevant NAS RDAs and ESADDIs to establish the RDIs because it would ''serve the purpose of providing an overall reference value for food labeling more appropriately than a highest value'' and ''because of decreasing public health concern with nutritional deficiencies, it makes less sense to use maximum values as the basis for these reference values'' (55 FR 29476 at 29478).

In the 1993 RDI/DRV final rule, FDA redesignated the U.S. RDA values in part 101 (21 CFR part 101) for vitamins and minerals as RDIs. In addition, FDA established, under 21 CFR part 104, a single set of label reference values for adults and children 4 or more years of age, in part, because of space constraints on the food label and the fact that children over the age of 4 years consume the same foods that the rest of the population consumes (58 FR 2206 at 2213). These RDIs were based on the NAS RDAs set in 1968. Although FDA proposed in 1990 to base the RDIs on a population-weighted average of the RDAs and ESADDIs, in the 1993 RDI/DRV final rule FDA used the highest RDA for adults and children 4 or more years of age (excluding values for pregnant and lactating women) to serve as label reference values (58 FR 2206 at 2210 to 2213). FDA found that there was considerable and uniform support in the comments for continuing to select the highest nutrient value from this group and that vulnerable or at-risk groups would be sufficiently covered by electing the highest value. FDA referred to this approach as the ''population-coverage approach.''

On October 6, 1992, Congress passed the Dietary Supplement Act of 1992 that, in section 203, instructed FDA to not issue regulations before November 8, 1993, that would revise the U.S. RDAs (redesignated as RDIs) for vitamins or minerals (other than existing regulations that established the U.S. RDAs specified in § 101.9(c)(7)(iv) that were in effect prior to October 6, 1992). Thus, FDA did not codify new nutrient values in the 1993 RDI/DRV final rule. In the **Federal Register** of December 28, 1995 (60 FR 67164) (the 1995 final rule), FDA amended certain

[2]The ESADDIs are nutrient values set by NAS for essential nutrients for which data are available to estimate a range of requirements, but insufficient for developing a specific RDA (Ref. 3).

[3]In 1993, FDA redesignated the term U.S. RDA to RDI because the term U.S. RDA was easily confused with the term RDA (58 FR 2206 at 2207).

RDIs based on the 1989 NAS RDAs and ESADDIs.

In the 1995 final rule, FDA amended its regulations to establish RDIs for vitamin K and selenium based on the 1989 NAS RDAs, and for manganese, chromium, molybdenum, and chloride based on the 1989 ESADDIs (Ref. 3). FDA did not establish a DV for fluoride in the 1995 final rule because the 1989 NAS RDA report stated that published studies ''do not justify a classification of fluorine[4] as an essential element, according to accepted standards'' (Ref. 3 at p. 235) and because the primary sources of dietary fluoride (e.g., community water supplies, toothpastes, mouth rinses) are not required to bear nutrition labeling (60 FR 67164 at 67168). FDA concluded that the declaration of percent DV of fluoride within nutrition labeling on a limited number of foods that are relatively minor sources of the nutrient would be of little use in assisting consumers in maintaining healthy dietary practices (60 FR 67164 at 67168).

In addition, a notification was submitted under section 403(r)(2)(G) of the act (21 U.S.C. 343(r)(2)(G)) in 2001 for the use of certain nutrient content claims for choline. These statements identify the daily value for choline as 550 milligrams (mg).[5] This value is based on the Adequate Intake (AI) set by the Institute of Medicine (IOM) of the NAS in 1998 (Refs. 9 and 20).

2. DRVs

The 1993 RDI/DRV final rule also identified DRVs for those nutrients that are important to diet and health (e.g., total fat, saturated fat, cholesterol, total carbohydrate (CHO), protein, dietary fiber, sodium, and potassium). The DRVs are based on the NAS Diet and Health Report (sodium, potassium, fat, saturated fat, cholesterol, carbohydrate, and dietary fiber) (Ref. 4), the Surgeon General's Report on Nutrition and Health (dietary fiber) (Ref. 5), and the 1990 Dietary Guidelines for Americans (Ref. 6). The DRV for protein (50 grams per day (g/d)) was set at 10 percent of 2,000 calories based on an adjusted average of the 1989 RDA (Ref. 3). The use of ''calories'' to mean ''kilocalories'' (kcals) is commonly accepted and more readily understood by consumers.

The DRVs in the 1993 RDI/DRV final rule (58 FR 2206) were based on a 2,000 calorie reference diet. In the 1990 proposal (55 FR 29476 at 29482), FDA proposed using a 2,350 calories reference diet based on a population adjusted mean of recommended calorie allowances for persons 4 or more years of age (excluding pregnant and lactating women) (from table 3–5 of the 10th edition of ''Recommended Dietary Allowances'' (Ref. 3)). However, FDA received several comments opposing the 2,350 reference values because of concerns that this value was too high, especially among women (58 FR 2206 at 2217). In addition, several comments suggested that using 2,000 calories as a reference diet would be easier for consumers to use in calculations and closer to caloric requirements of older women who are ''at risk for excessive calories and fat'' (*id.*). The 2,000 calorie reference diet FDA adopted was consistent with the ''population-coverage approach'' as it selected a lower calorie basis for the DRVs for the group at risk (i.e., older women).

B. Nutrient Content Final Rule

In the **Federal Register** of January 6, 1993 (58 FR 2079), FDA published a final rule entitled ''Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label'' (the 1993 nutrient content final rule). The 1993 nutrient content final rule: (1) Requires nutrition labeling on most foods that are regulated by FDA, (2) revises the list of required nutrients and food components and the conditions for declaring them in nutrition labeling, (3) specifies a new format for declaring nutrition information, (4) allows specified products to be exempt from nutrition labeling, and (5) prescribes a simplified form of nutrition labeling and the circumstances in which such simplified nutrition labeling can be used. An example of a Nutrition Facts label can be found in appendix B.

1. Required and Voluntary Labeling of Nutrients on Food Products (§ 101.9(c))

With respect to nutrition labeling of foods, the 1993 nutrient content final rule declared that nutrition information on the label and in labeling of foods shall contain information about the level of the following nutrients: (1) Calories or total calories; (2) calories from fat; (3) calories from saturated fat (voluntary); (4) total fat; (5) saturated fat; (6) polyunsaturated fat (voluntary); (7) monounsaturated fat (voluntary); (8) cholesterol; (9) sodium; (10) potassium (voluntary); (11) total carbohydrate (including sugars (mono- and disaccharides), oligosaccharides, starch, fiber, and organic acids); (12) dietary fiber; (13) soluble fiber (voluntary); (14) insoluble fiber (voluntary); (15) sugars; (16) sugar alcohol (voluntary); (17) other carbohydrate (voluntary); (18) protein; and (19) vitamins and minerals (see § 101.9(c)(1) through (c)(8)). However, those nutrients that can be declared voluntarily, as described previously in this document, must be declared when a nutrient content or health claim is made (§ 101.9(c)). In the **Federal Register** of July 11, 2003 (68 FR 41434), FDA amended its regulations on nutrition labeling to require *trans* fatty acids be declared in grams per serving in the nutrition label of conventional foods and dietary supplements (see section G).

Nutrient information for both mandatory and any voluntary nutrients that are to be declared in the nutrition label, except vitamins and minerals, shall be declared with the name of each nutrient, and the quantitative amount by weight for that nutrient (i.e. g or mg) (see § 101.9(d)(7)(i)). A listing of the percent DRV as established in § 101.9(c)(7)(iii) and (c)(9) (see table 1 of this document for reference values) is required under the heading percent DV for each nutrient for which a DRV was established, except that the percent for protein may be omitted (see § 101.9(d)(7)(ii)).

The regulations require that information about these nutrients be declared on the nutrition label and that no nutrients or food components, other than those listed, may be included on the nutrition label (§ 101.9(c)).

A statement about the percent of the RDI, expressed as the percent of the DV for vitamin A, vitamin C, calcium, and iron, in that order, is required (see table 1 of this document for reference values) (§ 101.9(c)(8)(ii)). These four vitamin and mineral nutrients are required to be declared because of public health concerns relative to inadequate intake of these nutrients by specific portions of the population, as well as the possible association between the lack of several of these nutrients in the diet and the risk of chronic disease (58 FR 2079 at 2106). The declaration of other vitamins and minerals that have an RDI is required when they are added as a nutrient supplement or when a claim is made about them (§ 101.9(c)(8)(ii)). If the amount of the vitamin or mineral is present at less than 2 percent of the RDI, declaration of an amount is not required or the content may be expressed as zero (§ 101.9(c)(8)(iii)).

[4]Fluoride is the ionized form of the element fluorine.

[5]FDA has not acted to prohibit or modify the claims, and therefore, manufacturers may use the specified claims on the label and in the labeling of any food or dietary supplement product that qualifies for the claims described in the notification.

TABLE 1.—REFERENCE VALUES FOR NUTRITION LABELING (BASED ON A 2,000 CALORIE INTAKE; FOR ADULTS AND CHILDREN 4 OR MORE YEARS OF AGE)

Nutrient[1]	Unit of Measure	Daily Values
Total Fat	g	65
Saturated fatty acids	g	20
Cholesterol	mg	300
Sodium	mg	2,400
Potassium	mg	3,500
Total carbohydrate	g	300
Fiber	g	25
Protein	g	50
Vitamin A	International Units (IU)	5,000
Vitamin C	mg	60
Calcium	mg	1,000
Iron	mg	18
Vitamin D	IU	400
Vitamin E	IU	30
Vitamin K	micrograms (µg)	80
Thiamin	mg	1.5
Riboflavin	mg	1.7
Niacin	mg	20
Vitamin B6	mg	2.0
Folate	µg	400
Vitamin B12	µg	6.0
Biotin	µg	300
Pantothenic acid	mg	10
Phosphorus	mg	1,000
Iodine	µg	150
Magnesium	mg	400
Zinc	mg	15
Selenium	µg	70
Copper	mg	2.0
Manganese	mg	2.0
Chromium	µg	120

TABLE 1.—REFERENCE VALUES FOR NUTRITION LABELING (BASED ON A 2,000 CALORIE INTAKE; FOR ADULTS AND CHILDREN 4 OR MORE YEARS OF AGE)—Continued

Nutrient[1]	Unit of Measure	Daily Values
Molybdenum	µg	75
Chloride	mg	3,400

[1]Nutrients in this table are listed in the order in which they are required to appear on a label in accordance with § 101.9(c). This list includes only those nutrients for which a DRV has been established in § 101.9(c)(9) or a RDI in § 101.9(c)(8)(iv).

The declaration of other vitamins and minerals with an RDI need not be declared if: (1) Neither the nutrient nor the component is otherwise referred to on the label or in labeling or advertising and (2) the vitamins and minerals are required or permitted in a standardized food (e.g., thiamin, riboflavin, and niacin in enriched flour) and included in a food solely for technological purposes and declared only in the ingredient statement (§ 101.9(c)(8)(ii)). Foods that are represented or purported to be for use by infants (up to 12 months of age), children 1 to 4 years of age, pregnant women, or lactating women must use the RDIs that are specified for the intended group (§ 101.9(c)(8)(i)). However, FDA has not codified RDI values to use for these various groups. FDA stated, in the 1995 final rule, that it intended to address the issue of RDIs for all nutrients for the various age groups in a future rulemaking but was not doing so in that rule due to the continuing questions about how to arrive at such values. FDA noted that, for conventional foods, there could be no declaration on labels of foods represented or purported to be for use by infants, children less than 4 years of age, or pregnant or lactating women for vitamin K, selenium, chloride, manganese, chromium, and molybdenum until such time as RDIs are established for such groups (60 FR 67164 at 67171). FDA stated that these six nutrients could be specified in mg or µg amounts in dietary supplements under § 101.36 with an asterisk in the percent DV column that refers to a footnote stating ''Daily Value not established.''

Prior to the 1995 final rule, FDA noted in the 1993 RDI/DRV final rule that manufacturers have continued to use the nutrient values that were contained in 21 CFR 105.3(b) (FDA deleted this paragraph on March 16, 1979 (44 FR 16005)), as label reference values for use on foods purported or represented to be for use by infants, children under 4 years of age, or pregnant or lactating women, without objection from FDA (58 FR 2206 at 2213). The RDIs for the vitamins and minerals for these groups are listed in a table in the 1993 RDI/DRV final rule as guidance (58 FR 2206 at 2213). Such table does not include the seven nutrients that FDA stated could not be on conventional food labeling for these specific groups in the 1995 final rule. Section 101.9(c)(8)(i) states that all other foods must use the RDI for adults and children 4 or more years of age.

2. Application of DVs

Section 403(q) of the act provides discretion to the agency to require information about nutrients on the food label when the agency determines such information will ''assist consumers in maintaining healthy dietary practices.'' Section 2(b)(1)(A) of the 1990 amendments states that nutrition labeling must ''be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in context of a total daily diet.'' In the 1993 nutrient content final rule, FDA stated that ''the nutrition label can and should help consumers make informed food choices, and that it can also contribute to consumers maintaining healthy dietary practices'' (58 FR 2079 at 2114). While the DVs do not represent dietary goals for individuals, their intended use is to provide an overall population reference value on the food label for the consumer (55 FR 29476 at 29481).

In order to determine a nutrition labeling format that could be used most effectively by consumers, FDA conducted consumer research and evaluated research conducted by others in considering requirements for the nutrition label format in the 1993 nutrient content final rule (58 FR 2079 at 2115–2121). Based on the results of several consumer studies that evaluated the ability of nutrition label formats to enable consumers to understand the relative significance of product nutrition information in the context of a total daily diet, FDA concluded the following: (1) The declaration of nutrient amount information as percentages of DV or the placement of adjectives (e.g., high, medium, or low) next to the nutrient amount information are effective ways to help consumers understand the significance of product nutrition information in the context of the total daily diet; (2) the percent DV declarations moderate dietary judgments about a food; and (3) other format elements, such as a list of DRVs

for important macronutrients, highlighting, or grouping nutrients according to Dietary Guidelines for Americans, did not help consumers to make better dietary judgments (58 FR 2079 at 2118). Upon reviewing the results of several studies that evaluated the consumer's use of the nutrition label, the two most reported uses identified by FDA were to evaluate nutrition characteristics of single products and to assist in making choices between products (58 FR 2079 at 2121 and references cited therein).

Informed choices include making judgments about a food product's contribution to the total diet and making comparisons between the nutritional quality of different food products. Findings from the FDA Food Label Use and Nutrition Education Surveys (FLUNES) conducted in 1994 and 1995 showed that more than half of consumers used the Nutrition Facts label to make a judgment about the overall nutritional quality of a food product, especially the fat content (Ref. 21).

3. Uses of the DVs in Nutrient Content and Health Claims

The DVs are used to determine, in part, whether a food or dietary supplement is eligible to bear nutrient content claims or health claims. For nutrient content claims, a food or dietary supplement must contain 10 to 19 percent of the DV per Reference Amount Customarily Consumed (RACC) in order to be labeled as a good source of a particular nutrient and must contain 20 percent or more of the DV per RACC in order to be labeled as an excellent source of a particular nutrient (§ 101.54(b) and (c)). When a health claim is about the effects at decreased dietary intake levels (i.e., low claim), the levels must meet the definition for use of the term low that has been established for that substance, unless a specific alternative level has been established (§ 101.14(d)(2)(vi)). If no definition for low has been established, the level of the substance must meet the level established in the regulation authorizing the claim. For health claims, when a claim is about the effects of consuming the substance at other than decreased dietary levels (i.e. not a low claim), a food must meet the definition of high (20 percent of the DV) for the substance that is the subject of the claim, if the agency has established a definition for the use of the term ''high'' for that substance and the agency has not established an alternative level for that nutrient in the health claim regulation (§ 101.14(d)(2)(vii)). For a few health claims authorized in §§ 101.76, 101.78, and 101.79, an eligibility requirement is based upon meeting the definition for a good source (10 percent) of the DV for a particular nutrient. The specific eligibility requirements for each authorized health claim are set forth in subpart E, §§ 101.70 to 101.83. In addition, foods bearing health claims, other than dietary supplements or where otherwise provided for in regulations, must contain 10 percent or more of the DV, prior to any nutrient addition, for one of the following nutrients: Vitamins A, vitamin C, iron, calcium, protein, or fiber (§ 101.14(e)(6)).

C. Labeling of Dietary Supplements

As part of the implementation of the Dietary Supplement Health and Education Act of 1994, FDA issued final regulations in the **Federal Register** of September 23, 1997 (62 FR 49826), requiring that a Supplement Facts label appear on the label or labeling of all dietary supplements. The Supplement Facts label is similar to the Nutrition Facts label in both content and format. Examples of Supplement Facts labels can be found in appendix B. The Supplement Facts label must include the amount and percent DV of the same nutrients that are required for conventional foods if the nutrients are present in the supplement, as well as the amount of other dietary ingredients present (§ 101.36(b)). Nutrients that have established DVs are listed first, followed by a horizontal line that separates these nutrients from dietary ingredients that have no DVs (e.g., botanicals). The Supplement Facts label must state that percent DVs have not been established for these dietary ingredients and must indicate these ingredients clearly with an asterisk (*) (§ 101.36(b)(3)(iv)).

D. IOM DRIs and Acceptable Macronutrient Distribution Ranges

Beginning in 1997, the IOM began publishing a series of reports on reference intake values (Refs. 8 to 14), collectively known as the DRIs. The DRIs are defined intake levels and include the AI, estimated average requirement (EAR), RDA, and the tolerable upper intake level (UL). DRIs were set for those vitamins, minerals, and macronutrients that are essential in humans and/or provide a beneficial role in human health. While many of the RDAs were revised for nutrients that had an existing RDA (e.g., iron and vitamin A), some nutrients that had RDAs now have an AI (e.g., calcium and vitamin K). Those nutrients that had an ESADDI, now have either an RDA (copper and molybdenum) or an AI (manganese, fluoride, and chromium). Although not considered to be a DRI that provides a defined intake level, the IOM also set acceptable macronutrient distribution ranges (AMDRs) for carbohydrate (i.e., sugars (mono-, di- and oligosaccharides) and starch), total fat, *n*-3 and *n*-6 polyunsaturated fatty acids, and protein (Ref. 13 and Ref. 16 at p. 93). The DRIs and AMDRs were set for the following life stage groups: Infants (0 to 6 and 7 to 12 months); toddlers (1 to 3 years); boys and girls (4 to 8 years); adolescent boys and girls (9 to 13 and 14 to 18 years); adult men and women (19 to 30, 31 to 50, 51 to 70, and greater than 70 years); and pregnant and lactating women.

1. EAR

The EAR for a nutrient is defined as the daily intake value that is estimated to meet the requirement for that nutrient, as defined by a specific criterion of adequacy or optimal health, in half of the apparently healthy individuals in a specific life stage and gender group. This definition of the EAR implies a median, rather than a mean or average. The median and mean would be the same if the distribution of requirements followed a symmetrical distribution.

In the case of energy, the IOM set an estimated energy requirement (EER) to represent the average dietary energy intake that is predicted to maintain energy balance in a healthy adult of a defined age, gender, weight, height, and physical activity level (PAL). PAL is the ratio of total energy expenditure (TEE) divided by the basal rate of energy expenditure. The EER equations use one of the four PAL categories: Sedentary, low active, active, and very active. In children and pregnant and lactating women, the EER meets the needs associated with the deposition of tissues or secretion of milk at rates consistent with good health.

The EAR and the EER are used for assessing nutrient intakes of groups. For nutrients with an EAR and for the EER, the prevalence of inadequacy in the population group for the nutrient or energy level evaluated is usually the approximate percentage of the population evaluated whose intakes fall below the EAR for the nutrient or the EER (Ref. 22). The EAR for the nutrient and the EER can also be used to plan for an acceptably low prevalence of inadequate intakes within a group. The EAR for a nutrient and the EER should not be used as an intake goal for the individual. Examples of planning for groups include planning diets in an assisted-living facility for senior citizens

or planning menus for a school nutrition program (Ref. 15).

2. RDAs

The RDA is an estimate of the daily average intake level that meets the nutrient requirements of nearly all (97 to 98 percent) healthy individuals in a particular life stage and gender group and assuming a normal distribution of requirements (Ref. 8). An RDA cannot be set without an EAR. For all nutrients, except iron, the RDA was set based on the EAR plus 2–times the standard deviation (SD) of the EAR : RDA = EAR + 2 x $SD_{requirement}$. If data about the variability in the EAR for a nutrient were insufficient to calculate the SD_{EAR}, then a coefficient of variation (CV) of 10 percent was assumed.

If individual intakes have been observed for a large number of days and are at the RDA, or observed intakes for fewer days are well above the RDA, there can be a high level of confidence that the intake is adequate. Under these conditions, RDAs can be used for assessing intakes of individuals for nutritional adequacy. The RDA can also be used to plan for intakes of individuals. The RDA should not be used to plan intakes of groups. The RDA is not used to plan intakes of groups because the median of a target intake distribution for a group will usually exceed the RDA because the variance in usual intakes exceeds the variance in requirements. Thus, the selection of the RDA as the median of the target usual intake distribution for groups is not recommended as it results in a greater percentage of inadequacy. The IOM report on the application of the DRIs in planning diets for individuals provided several examples of nutrient-based food guidance systems that could be used by individuals for planning diets, including food and supplement labels (e.g., the Nutrition Facts label) (Ref. 15).

3. AI

If there is insufficient scientific evidence to calculate the EAR and therefore insufficient evidence on which to establish an RDA for an essential nutrient or a nutrient that is beneficial for human health, then an AI is determined. AIs are based on the following: (1) Scientific evidence for requirements that is insufficient to set an EAR (e.g., calcium, vitamin D, choline, biotin, fluoride, sodium); (2) experimental data on risk reduction of chronic disease that are insufficient to set an EAR (e.g., dietary fiber, potassium); or (3) median intakes of a nutrient usually using national nutrition intake survey data, provided there is no evidence of a deficiency of the nutrient in the United States (e.g., pantothenic acid, vitamin K, chromium, manganese, linoleic acid, and α-linolenic acid). There is much less certainty about an AI value than about an RDA value. The AI for a nutrient is expected to exceed the RDA for that nutrient, and therefore it should cover the needs of more than 97 to 98 percent of individuals. The IOM set most AIs for young infants (0 to 6 months of age) based on the average intake of the nutrient consumed exclusively from breastfed infants, provided that breast milk provides a sufficient amount of a nutrient to meet the needs of the infant. The AIs for older infants (7 to 12 months) were set based on: (1) The average intake of the nutrient consumed exclusively from breastfed infants and, if data were available, average intakes of a nutrient provided by complimentary weaning foods; and/or (2) extrapolated from the AI of younger infants; and/or (3) extrapolated from adult AIs; and/or (4) clinical data. The AIs for iron and zinc for older infants could not be set using intake from breast milk because the level of iron and zinc in human milk is not sufficient to meet their needs. For iron, zinc, and protein; EARs and RDAs for older infants 7 to 12 months were set based upon data regarding daily requirements.

Usual individual intakes that are equal to or above the AI can be assumed adequate. The likelihood of inadequacy of usual intakes below the AI cannot be determined since there is insufficient information of the distribution of requirements. The AI can also be used to plan for intakes of individuals (Ref. 15).

4. UL

The UL is the highest level of daily nutrient intake that is likely to pose no risk of adverse health effects for almost all individuals in the specific life stage group. As intake increases above the UL, there is a potential for an increased risk of adverse effects. The UL is not intended to be a recommended level of intake, as there is no established benefit for healthy individuals if they consume a nutrient in amounts exceeding the RDA or AI.

The UL can be used to estimate the percentage of the population at potential risk of adverse effects from excess nutrient intake. The UL can also be used to plan for usual intakes below this level for an individual or in planning to minimize the proportion of the population at risk of excess nutrient intake (Ref. 15).

5. AMDR

An AMDR is a range of intakes for a particular energy source (e.g., fat, fatty acids, carbohydrate, and protein) that is associated with reduced risk of chronic disease while providing adequate intakes of essential nutrients. The AMDR of a macronutrient (e.g., fat) is expressed as a percentage of total energy intake because its requirement is dependent on other energy sources (e.g., carbohydrate and protein). If an individual consumes below or above this range, there is a potential for increasing the risk of chronic diseases shown to affect long-term health, as well as increasing the risk of insufficient intakes of essential nutrients.

6. DRIs Set for Macronutrients and Micronutrients

Based on the review of all macronutrients and micronutrients that are known to be essential and/or beneficial in humans, the IOM set the DRIs that are listed for each nutrient in tables 2 to 10 of this document. As can be seen from tables 11a and 11b of this document, the population-coverage and population-weighted AIs for fluoride and the population-coverage RDAs for synthetic niacin exceed the UL for children 4 to 8 years.

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Table 2.--Dietary Reference Intakes (DRIs): Recommended Intakes for Individuals, Vitamins

Food and Nutrition Board, Institute of Medicine, National Academies

Life Stage Group	Vit A (µg/d)[a]	Vit C (mg/d)	Vit D (µg/d)[b,c]	Vit E (mg/d)[d]	Vit K (µg/d)	Thiamin (mg/d)	Riboflavin (mg/d)	Niacin (mg/d)[e]	Vit B_6 (mg/d)	Folate (µg/d)[f]	Vit B_{12} (µg/d)	Pantothenic Acid (mg/d)	Biotin (µg/d)	Choline[g] (mg/d)
Infants														
0–6 mo	400*	40*	5*	4*	2.0*	0.2*	0.3*	2*	0.1*	65*	0.4*	1.7*	5*	125*
7–12 mo	500*	50*	5*	5*	2.5*	0.3*	0.4*	4*	0.3*	80*	0.5*	1.8*	6*	150*
Children														
1–3 y	**300**	**15**	5*	**6**	30*	**0.5**	**0.5**	**6**	**0.5**	**150**	**0.9**	2*	8*	200*
4–8 y	**400**	**25**	5*	**7**	55*	**0.6**	**0.6**	**8**	**0.6**	**200**	**1.2**	3*	12*	250*
Males														
9–13 y	**600**	**45**	5*	**11**	60*	**0.9**	**0.9**	**12**	**1.0**	**300**	**1.8**	4*	20*	375*
14–18 y	**900**	**75**	5*	**15**	75*	**1.2**	**1.3**	**16**	**1.3**	**400**	**2.4**	5*	25*	550*
19–30 y	**900**	**90**	5*	**15**	120*	**1.2**	**1.3**	**16**	**1.3**	**400**	**2.4**	5*	30*	550*
31–50 y	**900**	**90**	5*	**15**	120*	**1.2**	**1.3**	**16**	**1.3**	**400**	**2.4**	5*	30*	550*
51–70 y	**900**	**90**	10*	**15**	120*	**1.2**	**1.3**	**16**	**1.7**	**400**	**2.4**[i]	5*	30*	550*
> 70 y	**900**	**90**	15*	**15**	120*	**1.2**	**1.3**	**16**	**1.7**	**400**	**2.4**[i]	5*	30*	550*
Females														
9–13 y	**600**	**45**	5*	**11**	60*	**0.9**	**0.9**	**12**	**1.0**	**300**	**1.8**	4*	20*	375*
14–18 y	**700**	**65**	5*	**15**	75*	**1.0**	**1.0**	**14**	**1.2**	**400**[j]	**2.4**	5*	25*	400*
19–30 y	**700**	**75**	5*	**15**	90*	**1.1**	**1.1**	**14**	**1.3**	**400**[j]	**2.4**	5*	30*	425*
31–50 y	**700**	**75**	5*	**15**	90*	**1.1**	**1.1**	**14**	**1.3**	**400**[j]	**2.4**	5*	30*	425*
51–70 y	**700**	**75**	10*	**15**	90*	**1.1**	**1.1**	**14**	**1.5**	**400**	**2.4**[h]	5*	30*	425*
> 70 y	**700**	**75**	15*	**15**	90*	**1.1**	**1.1**	**14**	**1.5**	**400**	**2.4**[h]	5*	30*	425*
Pregnancy														
14–18 y	**750**	**80**	5*	**15**	75*	**1.4**	**1.4**	**18**	**1.9**	**600**[j]	**2.6**	6*	30*	450*
19–30 y	**770**	**85**	5*	**15**	90*	**1.4**	**1.4**	**18**	**1.9**	**600**[j]	**2.6**	6*	30*	450*
31–50 y	**770**	**85**	5*	**15**	90*	**1.4**	**1.4**	**18**	**1.9**	**600**[j]	**2.6**	6*	30*	450*
Lactation														
14–18 y	**1,200**	**115**	5*	**19**	75*	**1.4**	**1.6**	**17**	**2.0**	**500**	**2.8**	7*	35*	550*
19–30 y	**1,300**	**120**	5*	**19**	90*	**1.4**	**1.6**	**17**	**2.0**	**500**	**2.8**	7*	35*	550*
31–50 y	**1,300**	**120**	5*	**19**	90*	**1.4**	**1.6**	**17**	**2.0**	**500**	**2.8**	7*	35*	550*

NOTE: This table (taken from the DRI reports, see www nap edu) presents Recommended Dietary Allowances (RDAs) in **bold type** and Adequate Intakes (AIs) in ordinary type followed by an asterisk (*) RDAs and AIs may both be used as goals for individual intake RDAs are set to meet the needs of almost all (97 to 98 percent) individuals in a group For healthy breastfed infants, the AI is the mean intake The AI for other life stage and gender groups is believed to cover needs of all individuals in the group, but lack of data or uncertainty in the data prevent being able to specify with confidence the percentage of individuals covered by this intake

[a] As retinol activity equivalents (RAEs) 1 RAE = 1 µg retinol, 12 µg β-carotene, 24 µg α-carotene, or 24 µg β-cryptoxanthin The RAE for dietary provitamin A carotenoids is twofold greater than retinol equivalents (RE), whereas the RAE for preformed vitamin A is the same as RE

[b] As cholecalciferol 1 µg cholecalciferol = 40 IU vitamin D

[c] In the absence of adequate exposure to sunlight

[d] As α-tocopherol α-Tocopherol includes *RRR*-α-tocopherol, the only form of α-tocopherol that occurs naturally in foods, and the *2R*-stereoisomeric forms of α-tocopherol (*RRR*-, *RSR*-, *RRS*-, and *RSS*-α-tocopherol) that occur in fortified foods and supplements It does not include the *2S*-stereoisomeric forms of α-tocopherol (*SRR*-, *SSR*-, *SRS*-, and *SSS*-α-tocopherol), also found in fortified foods and supplements

[e] As niacin equivalents (NE) 1 mg of niacin = 60 mg of tryptophan, 0–6 months = preformed niacin (not NE)

[f] As dietary folate equivalents (DFE) 1 DFE = 1 µg food folate = 0 6 µg of folic acid from fortified food or as a supplement consumed with food = 0 5 µg of a supplement taken on an empty stomach

[g] Although AIs have been set for choline, there are few data to assess whether a dietary supply of choline is needed at all stages of the life cycle, and it may be that the choline requirement can be met by endogenous synthesis at some of these stages

[h] Because 10 to 30 percent of older people may malabsorb food-bound B_{12}, it is advisable for those older than 50 years to meet their RDA mainly by consuming foods fortified with B_{12} or a supplement containing B_{12}

[i] In view of evidence linking folate intake with neural tube defects in the fetus, it is recommended that all women capable of becoming pregnant consume 400 µg from supplements or fortified foods in addition to intake of food folate from a varied diet

[j] It is assumed that women will continue consuming 400 µg from supplements or fortified food until their pregnancy is confirmed and they enter prenatal care, which ordinarily occurs after the end of the periconceptional period—the critical time for formation of the neural tube

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Table 3.--Dietary Reference Intakes (DRIs): Recommended Intakes for Individuals, Elements

Food and Nutrition Board, Institute of Medicine, National Academies

Life Stage Group	Calcium (mg/d)	Chromium (µg/d)	Copper (µg/d)	Fluoride (mg/d)	Iodine (µg/d)	Iron (mg/d)	Magnesium (mg/d)	Manganese (mg/d)	Molybdenum (µg/d)	Phosphorus (mg/d)	Selenium (µg/d)	Zinc (mg/d)	Potassium (g/d)	Sodium (g/d)	Chloride (g/d)
Infants															
0–6 mo	210*	0.2*	200*	0.01*	110*	0.27*	30*	0.003*	2*	100*	15*	2*	0.4*	0.12*	0.18*
7–12 mo	270*	5.5*	220*	0.5*	130*	**11**	75*	0.6*	3*	275*	20*	**3**	0.7*	0.37*	0.57*
Children															
1–3 y	500*	11*	**340**	0.7*	**90**	**7**	**80**	1.2*	**17**	**460**	**20**	**3**	3.0*	1.0*	1.5*
4–8 y	800*	15*	**440**	1*	**90**	**10**	**130**	1.5*	**22**	**500**	**30**	**5**	3.8*	1.2*	1.9*
Males															
9–13 y	1,300*	25*	**700**	2*	**120**	**8**	**240**	1.9*	**34**	**1,250**	**40**	**8**	4.5*	1.5*	2.3*
14–18 y	1,300*	35*	**890**	3*	**150**	**11**	**410**	2.2*	**43**	**1,250**	**55**	**11**	4.7*	1.5*	2.3*
19–30 y	1,000*	35*	**900**	4*	**150**	**8**	**400**	2.3*	**45**	**700**	**55**	**11**	4.7*	1.5*	2.3*
31–50 y	1,000*	35*	**900**	4*	**150**	**8**	**420**	2.3*	**45**	**700**	**55**	**11**	4.7*	1.5*	2.3*
51–70 y	1,200*	30*	**900**	4*	**150**	**8**	**420**	2.3*	**45**	**700**	**55**	**11**	4.7*	1.3*	2.0*
> 70 y	1,200*	30*	**900**	4*	**150**	**8**	**420**	2.3*	**45**	**700**	**55**	**11**	4.7*	1.2*	1.8*
Females															
9–13 y	1,300*	21*	**700**	2*	**120**	**8**	**240**	1.6*	**34**	**1,250**	**40**	**8**	4.5*	1.5*	2.3*
14–18 y	1,300*	24*	**890**	3*	**150**	**15**	**360**	1.6*	**43**	**1,250**	**55**	**9**	4.7*	1.5*	2.3*
19–30 y	1,000*	25*	**900**	3*	**150**	**18**	**310**	1.8*	**45**	**700**	**55**	**8**	4.7*	1.5*	2.3*
31–50 y	1,000*	25*	**900**	3*	**150**	**18**	**320**	1.8*	**45**	**700**	**55**	**8**	4.7*	1.5*	2.3*
51–70 y	1,200*	20*	**900**	3*	**150**	**8**	**320**	1.8*	**45**	**700**	**55**	**8**	4.7*	1.3*	2.0*
> 70 y	1,200*	20*	**900**	3*	**150**	**8**	**320**	1.8*	**45**	**700**	**55**	**8**	4.7*	1.2*	1.8*
Pregnancy															
14–18 y	1,300*	29*	**1,000**	3*	**220**	**27**	**400**	2.0*	**50**	**1,250**	**60**	**12**	4.7*	1.5*	2.3*
19–30 y	1,000*	30*	**1,000**	3*	**220**	**27**	**350**	2.0*	**50**	**700**	**60**	**11**	4.7*	1.5*	2.3*
31–50 y	1,000*	30*	**1,000**	3*	**220**	**27**	**360**	2.0*	**50**	**700**	**60**	**11**	4.7*	1.5*	2.3*
Lactation															
14–18 y	1,300*	44*	**1,300**	3*	**290**	**10**	**360**	2.6*	**50**	**1,250**	**70**	**13**	5.1*	1.5*	2.3*
19–30 y	1,000*	45*	**1,300**	3*	**290**	**9**	**310**	2.6*	**50**	**700**	**70**	**12**	5.1*	1.5*	2.3*
31–50 y	1,000*	45*	**1,300**	3*	**290**	**9**	**320**	2.6*	**50**	**700**	**70**	**12**	5.1*	1.5*	2.3*

NOTE: This table presents Recommended Dietary Allowances (RDAs) in **bold type** and Adequate Intakes (AIs) in ordinary type followed by an asterisk (*). RDAs and AIs may both be used as goals for individual intake. RDAs are set to meet the needs of almost all (97 to 98 percent) individuals in a group. For healthy breastfed infants, the AI is the mean intake. The AI for other life stage and gender groups is believed to cover needs of all individuals in the group, but lack of data or uncertainty in the data prevent being able to specify with confidence the percentage of individuals covered by this intake.

SOURCES: *Dietary Reference Intakes for Calcium, Phosphorous, Magnesium, Vitamin D, and Fluoride* (1997); *Dietary Reference Intakes for Thiamin, Riboflavin, Niacin, Vitamin B_6, Folate, Vitamin B_{12}, Pantothenic Acid, Biotin, and Choline* (1998); *Dietary Reference Intakes for Vitamin C, Vitamin E, Selenium, and Carotenoids* (2000); *Dietary Reference Intakes for Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Copper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc* (2001); and *Dietary Reference Intakes for Water, Potassium, Sodium, Chloride, and Sulfate* (2004). These reports may be accessed via http://www.nap.edu.

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Table 4.--Dietary Reference Intakes (DRIs): Tolerable Upper Intake Levels (UL[a]), Vitamins

Food and Nutrition Board, Institute of Medicine, National Academies

Life Stage Group	Vitamin A (μg/d)[b]	Vitamin C (mg/d)	Vitamin D (μg/d)	Vitamin E (mg/d)[c,d]	Vitamin K	Thiamin	Ribo-flavin	Niacin (mg/d)[d]	Vitamin B_6 (mg/d)	Folate (μg/d)[d]	Vitamin B_{12}	Pantothenic Acid	Biotin	Choline (g/d)	Carote-noids[e]
Infants															
0–6 mo	600	ND[f]	25	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
7–12 mo	600	ND	25	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Children															
1–3 y	600	400	50	200	ND	ND	ND	10	30	300	ND	ND	ND	1.0	ND
4–8 y	900	650	50	300	ND	ND	ND	15	40	400	ND	ND	ND	1.0	ND
Males, Females															
9–13 y	1,700	1,200	50	600	ND	ND	ND	20	60	600	ND	ND	ND	2.0	ND
14–18 y	2,800	1,800	50	800	ND	ND	ND	30	80	800	ND	ND	ND	3.0	ND
19–70 y	3,000	2,000	50	1,000	ND	ND	ND	35	100	1,000	ND	ND	ND	3.5	ND
> 70 y	3,000	2,000	50	1,000	ND	ND	ND	35	100	1,000	ND	ND	ND	3.5	ND
Pregnancy															
14–18 y	2,800	1,800	50	800	ND	ND	ND	30	80	800	ND	ND	ND	3.0	ND
19–50 y	3,000	2,000	50	1,000	ND	ND	ND	35	100	1,000	ND	ND	ND	3.5	ND
Lactation															
14–18 y	2,800	1,800	50	800	ND	ND	ND	30	80	800	ND	ND	ND	3.0	ND
19–50 y	3,000	2,000	50	1,000	ND	ND	ND	35	100	1,000	ND	ND	ND	3.5	ND

[a] UL = The maximum level of daily nutrient intake that is likely to pose no risk of adverse effects. Unless otherwise specified, the UL represents total intake from food, water, and supplements. Due to lack of suitable data, ULs could not be established for vitamin K, thiamin, riboflavin, vitamin B_{12}, pantothenic acid, biotin, carotenoids. In the absence of ULs, extra caution may be warranted in consuming levels above recommended intakes.

[b] As preformed vitamin A only.

[c] As α-tocopherol; applies to any form of supplemental α-tocopherol.

[d] The ULs for vitamin E, niacin, and folate apply to synthetic forms obtained from supplements, fortified foods, or a combination of the two.

[e] β-Carotene supplements are advised only to serve as a provitamin A source for individuals at risk of vitamin A deficiency.

[f] ND = Not determinable due to lack of data of adverse effects in this age group and concern with regard to lack of ability to handle excess amounts. Source of intake should be from food only to prevent high levels of intake.

SOURCES: *Dietary Reference Intakes for Calcium, Phosphorous, Magnesium, Vitamin D, and Fluoride* (1997); *Dietary Reference Intakes for Thiamin, Riboflavin, Niacin, Vitamin B_6, Folate, Vitamin B_{12}, Pantothenic Acid, Biotin, and Choline* (1998); *Dietary Reference Intakes for Vitamin C, Vitamin E, Selenium, and Carotenoids* (2000); and *Dietary Reference Intakes for Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Copper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc* (2001). These reports may be accessed via http://www.nap.edu.

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Table 5.--Dietary Reference Intakes (DRIs): Tolerable Upper Intake Levels (UL[a]), Elements

Food and Nutrition Board, Institute of Medicine, National Academies

Life Stage Group	Arsenic[b]	Boron (mg/d)	Calcium (g/d)	Chromium	Copper (µg/d)	Fluoride (mg/d)	Iodine (µg/d)	Iron (mg/d)	Magnesium (mg/d)[c]	Manganese (mg/d)	Molybdenum (µg/d)	Nickel (mg/d)	Phosphorus (g/d)	Potassium	Selenium (µg/d)	Silicon[d]	Sulfate	Vanadium (mg/d)[e]	Zinc (mg/d)	Sodium (g/d)	Chloride (g/d)
Infants																					
0–6 mo	ND[f]	ND	ND	ND	ND	0.7	ND	40	ND	ND	ND	ND	ND	ND	45	ND	ND	ND	4	ND	ND
7–12 mo	ND	ND	ND	ND	ND	0.9	ND	40	ND	ND	ND	ND	ND	ND	60	ND	ND	ND	5	ND	ND
Children																					
1–3 y	ND	3	2.5	ND	1,000	1 3	200	40	65	2	300	0.2	3	ND	90	ND	ND	ND	7	1.5	2 3
4–8 y	ND	6	2 5	ND	3,000	2.2	300	40	110	3	600	0 3	3	ND	150	ND	ND	ND	12	1.9	2.9
Males, Females																					
9–13 y	ND	11	2 5	ND	5,000	10	600	40	350	6	1,100	0.6	4	ND	280	ND	ND	ND	23	2 2	3 4
14–18 y	ND	17	2.5	ND	8,000	10	900	45	350	9	1,700	1.0	4	ND	400	ND	ND	ND	34	2 3	3.6
19–70 y	ND	20	2 5	ND	10,000	10	1,100	45	350	11	2,000	1 0	4	ND	400	ND	ND	1 8	40	2.3	3.6
>70 y	ND	20	2 5	ND	10,000	10	1,100	45	350	11	2,000	1.0	3	ND	400	ND	ND	1.8	40	2.3	3 6
Pregnancy																					
14–18 y	ND	17	2 5	ND	8,000	10	900	45	350	9	1,700	1.0	3.5	ND	400	ND	ND	ND	34	2 3	3.6
19–50 y	ND	20	2 5	ND	10,000	10	1,100	45	350	11	2,000	1.0	3 5	ND	400	ND	ND	ND	40	2.3	3 6
Lactation																					
14–18 y	ND	17	2.5	ND	8,000	10	900	45	350	9	1,700	1 0	4	ND	400	ND	ND	ND	34	2 3	3 6
19–50 y	ND	20	2 5	ND	10,000	10	1,100	45	350	11	2,000	1.0	4	ND	400	ND	ND	ND	40	2.3	3 6

[a] UL = The maximum level of daily nutrient intake that is likely to pose no risk of adverse effects. Unless otherwise specified, the UL represents total intake from food, water, and supplements. Due to lack of suitable data, ULs could not be established for arsenic, chromium, silicon, potassium, and sulfate. In the absence of ULs, extra caution may be warranted in consuming levels above recommended intakes.

[b] Although the UL was not determined for arsenic, there is no justification for adding arsenic to food or supplements.

[c] The ULs for magnesium represent intake from a pharmacological agent only and do not include intake from food and water.

[d] Although silicon has not been shown to cause adverse effects in humans, there is no justification for adding silicon to supplements.

[e] Although vanadium in food has not been shown to cause adverse effects in humans, there is no justification for adding vanadium to food and vanadium supplements should be used with caution. The UL is based on adverse effects in laboratory animals and this data could be used to set a UL for adults but not children and adolescents.

[f] ND = Not determinable due to lack of data of adverse effects in this age group and concern with regard to lack of ability to handle excess amounts. Source of intake should be from food only to prevent high levels of intake.

SOURCES: *Dietary Reference Intakes for Calcium, Phosphorous, Magnesium, Vitamin D, and Fluoride* (1997); *Dietary Reference Intakes for Thiamin, Riboflavin, Niacin, Vitamin B_6, Folate, Vitamin B_{12}, Pantothenic Acid, Biotin, and Choline* (1998); *Dietary Reference Intakes for Vitamin C, Vitamin E, Selenium, and Carotenoids* (2000); *Dietary Reference Intakes for Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Copper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc* (2001); and *Dietary Reference Intakes for Water, Potassium, Sodium, Chloride, and Sulfate* (2004). These reports may be accessed via http://www.nap.edu

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Table 6.--Dietary Reference Intakes (DRIs): Estimated Energy Requirements (EER) for Men and Women 30 Years of Age[a]

Food and Nutrition Board, Institute of Medicine, National Academies

Height (m [in])	PAL[b]	Weight for BMI[c] of 18.5 kg/m^2 (kg [lb])	Weight for BMI of 24.99 kg/m^2 (kg [lb])	EER, Men[d] (kcal/day) BMI of 18.5 kg/m^2	EER, Men[d] (kcal/day) BMI of 24.99 kg/m^2	EER, Women[d] (kcal/day) BMI of 18.5 kg/m^2	EER, Women[d] (kcal/day) BMI of 24.99 kg/m^2
1.50 (59)	Sedentary	41.6 (92)	56.2 (124)	1,848	2,080	1,625	1,762
	Low active			2,009	2,267	1,803	1,956
	Active			2,215	2,506	2,025	2,198
	Very active			2,554	2,898	2,291	2,489
1.65 (65)	Sedentary	50.4 (111)	68.0 (150)	2,068	2,349	1,816	1,982
	Low active			2,254	2,566	2,016	2,202
	Active			2,490	2,842	2,267	2,477
	Very active			2,880	3,296	2,567	2,807
1.80 (71)	Sedentary	59.9 (132)	81.0 (178)	2,301	2,635	2,015	2,211
	Low active			2,513	2,884	2,239	2,459
	Active			2,782	3,200	2,519	2,769
	Very active			3,225	3,720	2,855	3,141

[a] For each year below 30, add 7 kcal/day for women and 10 kcal /day for men. For each year above 30, subtract 7 kcal/day for women and 10 kcal/day for men.

[b] PAL = physical activity level.

[c] BMI = body mass index.

[d] Derived from the following regression equations based on doubly labeled water data:

Adult man: EER = 662 – (9.53 × age [y]) + PA × (15.91 × wt [kg] + 539.6 × ht [m])

Adult woman: EER = 354 – (6.91 × age [y]) + PA × (9.36 × wt [kg] + 726 × ht [m])

Where PA refers to coefficient for PAL

PAL = total energy expenditure ÷ basal energy expenditure

PA = 1.0 if PAL ≥ 1.0 < 1.4 (sedentary)

PA = 1.12 if PAL ≥ 1.4 < 1.6 (low active)

PA = 1.27 if PAL ≥ 1.6 < 1.9 (active)

PA = 1.45 if PAL ≥ 1.9 < 2.5 (very active)

Table 7.--Dietary Reference Intakes (DRIs): Acceptable Macronutrient Distribution Ranges

Food and Nutrition Board, Institute of Medicine, National Academies

Macronutrient	Range (percent of energy) Children, 1–3 y	Children, 4–18 y	Adults
Fat	30–40	25–35	20–35
n-6 polyunsaturated fatty acids[a] (linoleic acid)	5–10	5–10	5–10
n-3 polyunsaturated fatty acids[a] (α-linolenic acid)	0.6–1.2	0.6–1.2	0.6–1.2
Carbohydrate	45–65	45–65	45–65
Protein	5–20	10–30	10–35

[a] Approximately 10 percent of the total can come from longer-chain *n*-3 or *n*-6 fatty acids.

SOURCE: *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (2002).

Table 8.--Dietary Reference Intakes (DRIs): Recommended Intakes for Individuals, Macronutrients
Food and Nutrition Board, Institute of Medicine, National Academies

Life Stage Group	Total Water[a] (L/d)	Carbohydrate (g/d)	Total Fiber (g/d)	Fat (g/d)	Linoleic Acid (g/d)	α-Linolenic Acid (g/d)	Protein[b] (g/d)
Infants							
0–6 mo	0.7*	60*	ND	31*	4.4*	0.5*	9.1*
7–12 mo	0.8*	95*	ND	30*	4.6*	0.5*	**11.0**[c]
Children							
1–3 y	1.3*	**130**	19*	ND	7*	0.7*	**13**
4–8 y	1.7*	**130**	25*	ND	10*	0.9*	**19**
Males							
9–13 y	2.4*	**130**	31*	ND	12*	1.2*	**34**
14–18 y	3.3*	**130**	38*	ND	16*	1.6*	**52**
19–30 y	3.7*	**130**	38*	ND	17*	1.6*	**56**
31–50 y	3.7*	**130**	38*	ND	17*	1.6*	**56**
51–70 y	3.7*	**130**	30*	ND	14*	1.6*	**56**
> 70 y	3.7*	**130**	30*	ND	14*	1.6*	**56**
Females							
9–13 y	2.1*	**130**	26*	ND	10*	1.0*	**34**
14–18 y	2.3*	**130**	26*	ND	11*	1.1*	**46**
19–30 y	2.7*	**130**	25*	ND	12*	1.1*	**46**
31–50 y	2.7*	**130**	25*	ND	12*	1.1*	**46**
51–70 y	2.7*	**130**	21*	ND	11*	1.1*	**46**
> 70 y	2.7*	**130**	21*	ND	11*	1.1*	**46**
Pregnancy							
14–18 y	3.0*	**175**	28*	ND	13*	1.4*	**71**
19–30 y	3.0*	**175**	28*	ND	13*	1.4*	**71**
31–50 y	3.0*	**175**	28*	ND	13*	1.4*	**71**
Lactation							
14–18 y	3.8*	**210**	29*	ND	13*	1.3*	**71**
19–30 y	3.8*	**210**	29*	ND	13*	1.3*	**71**
31–50 y	3.8*	**210**	29*	ND	13*	1.3*	**71**

NOTE: This table presents Recommended Dietary Allowances (RDAs) in **bold** type and Adequate Intakes (AIs) in ordinary type followed by an asterisk (*). RDAs and AIs may both be used as goals for individual intake. RDAs are set to meet the needs of almost all (97 to 98 percent) individuals in a group. For healthy infants fed human milk, the AI is the mean intake. The AI for other life stage and gender groups is believed to cover the needs of all individuals in the group, but lack of data or uncertainty in the data prevent being able to specify with confidence the percentage of individuals covered by this intake.

[a] *Total* water includes all water contained in food, beverages, and drinking water.

[b] Based on 0.8 g/kg body weight for the reference body weight.

[c] Change from 13.5 in prepublication copy due to calculation error.

Table 9.--Dietary Reference Intakes (DRIs): Additional Macronutrient Recommendations
Food and Nutrition Board, Institute of Medicine, National Academies

Recommendation
As low as possible while consuming a nutritionally adequate diet
As low as possible while consuming a nutritionally adequate diet
As low as possible while consuming a nutritionally adequate diet
Limit to no more than 25 percent of total energy

SOURCE: *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (2002).

Table 10.--Dietary Reference Intakes (DRIs): Estimated Average Requirements for Groups

Food and Nutrition Board, Institute of Medicine, National Academies

Life Stage Group	CHO (g/d)	Protein (g/d)[a]	Vit A (μg/d)[b]	Vit C (mg/d)	Vit E (mg/d)[c]	Thiamin (mg/d)	Riboflavin (mg/d)	Niacin (mg/d)[d]	Vit B_6 (mg/d)	Folate (μg/d)[e]	Vit B_{12} (μg/d)	Copper (μg/d)	Iodine (μg/d)	Iron (mg/d)	Magnesium (mg/d)	Molybdenum (μg/d)	Phosphorus (mg/d)	Selenium (μg/d)	Zinc (mg/d)
Infants																			
7–12 mo		9*												6.9					2.5
Children																			
1–3 y	100	11	210	13	5	0.4	0.4	5	0.4	120	0.7	260	65	3.0	65	13	380	17	2.5
4–8 y	100	15	275	22	6	0.5	0.5	6	0.5	160	1.0	340	65	4.1	110	17	405	23	4.0
Males																			
9–13 y	100	27	445	39	9	0.7	0.8	9	0.8	250	1.5	540	73	5.9	200	26	1,055	35	7.0
14–18 y	100	44	630	63	12	1.0	1.1	12	1.1	330	2.0	685	95	7.7	340	33	1,055	45	8.5
19–30 y	100	46	625	75	12	1.0	1.1	12	1.1	320	2.0	700	95	6	330	34	580	45	9.4
31–50 y	100	46	625	75	12	1.0	1.1	12	1.1	320	2.0	700	95	6	350	34	580	45	9.4
51–70 y	100	46	625	75	12	1.0	1.1	12	1.4	320	2.0	700	95	6	350	34	580	45	9.4
> 70 y	100	46	625	75	12	1.0	1.1	12	1.4	320	2.0	700	95	6	350	34	580	45	9.4
Females																			
9–13 y	100	28	420	39	9	0.7	0.8	9	0.8	250	1.5	540	73	5.7	200	26	1,055	35	7.0
14–18 y	100	38	485	56	12	0.9	0.9	11	1.0	330	2.0	685	95	7.9	300	33	1,055	45	7.3
19–30 y	100	38	500	60	12	0.9	0.9	11	1.1	320	2.0	700	95	8.1	255	34	580	45	6.8
31–50 y	100	38	500	60	12	0.9	0.9	11	1.1	320	2.0	700	95	8.1	265	34	580	45	6 8
51–70 y	100	38	500	60	12	0.9	0.9	11	1.3	320	2.0	700	95	5	265	34	580	45	6.8
> 70 y	100	38	500	60	12	0.9	0.9	11	1.3	320	2.0	700	95	5	265	34	580	45	6.8
Pregnancy																			
14–18 y	135	50	530	66	12	1.2	1.2	14	1.6	520	2.2	785	160	23	335	40	1,055	49	10.0
19–30 y	135	50	550	70	12	1.2	1.2	14	1.6	520	2.2	800	160	22	290	40	580	49	9.5
31–50 y	135	50	550	70	12	1.2	1.2	14	1.6	520	2.2	800	160	22	300	40	580	49	9.5
Lactation																			
14–18 y	160	60	885	96	16	1.2	1.3	13	1.7	450	2.4	985	209	7	300	35	1,055	59	10.9
19–30 y	160	60	900	100	16	1.2	1.3	13	1.7	450	2.4	1,000	209	6.5	255	36	580	59	10.4
31–50 y	160	60	900	100	16	1.2	1.3	13	1.7	450	2.4	1,000	209	6.5	265	36	580	59	10.4

NOTE: This table presents Estimated Average Requirements (EARs), which serve two purposes: for assessing adequacy of population intakes, and as the basis for calculating Recommended Dietary Allowances (RDAs) for individuals for those nutrients. EARs have not been established for vitamin D, vitamin K, pantothenic acid, biotin, choline, calcium, chromium, fluoride, manganese, or other nutrients not yet evaluated via the DRI process.

[a] For individual at reference weight (Table 1-1). *indicates change from prepublication copy due to calculation error.

[b] As retinol activity equivalents (RAEs). 1 RAE = 1 μg retinol, 12 μg β-carotene, 24 μg α-carotene, or 24 μg β-cryptoxanthin. The RAE for dietary provitamin A carotenoids is two-fold greater than retinol equivalents (RE), whereas the RAE for preformed vitamin A is the same as RE.

[c] As α-tocopherol. α-Tocopherol includes *RRR*-α-tocopherol, the only form of α-tocopherol that occurs naturally in foods, and the *2R*-stereoisomeric forms of α-tocopherol (*RRR*-, *RSR*-, *RRS*-, and *RSS*-α-tocopherol) that occur in fortified foods and supplements. It does not include the *2S*-stereoisomeric forms of α-tocopherol (*SRR*-, *SSR*-, *SRS*-, and *SSS*-α-tocopherol), also found in fortified foods and supplements.

[d] As niacin equivalents (NE). 1 mg of niacin = 60 mg of tryptophan.

[e] As dietary folate equivalents (DFE). 1 DFE = 1 μg food folate = 0.6 μg of folic acid from fortified food or as a supplement consumed with food = 0.5 μg of a supplement taken on an empty stomach.

SOURCES: *Dietary Reference Intakes for Calcium, Phosphorous, Magnesium, Vitamin D, and Fluoride* (1997); *Dietary Reference Intakes for Thiamin, Riboflavin, Niacin, Vitamin B_6, Folate, Vitamin B_{12}, Pantothenic Acid, Biotin, and Choline* (1998); *Dietary Reference Intakes for Vitamin C, Vitamin E, Selenium, and Carotenoids* (2000); *Dietary Reference Intakes for Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Copper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc* (2001), and *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (2002). These reports may be accessed via www.nap.edu.

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BILLING CODE 4160–01–C

E. IOM Report on Guiding Principles for Nutrition Labeling

In 2003 the IOM committee on nutrition labeling (the IOM Committee) considered how the DRIs can be used to develop appropriate reference values for nutrition labeling (Ref. 16). The IOM Committee's report recommended the following 10 guiding principles for nutrition labeling:

• *Nutrition information in the Nutrition Facts label should continue to be expressed as percent DV*. The concept of percent DV was developed by FDA in response to NLEA to help consumers better comprehend the nutritional value of food and to understand its relative significance in the context of a daily diet. The percent DV concept was modeled after the ''percent of U.S. RDAs'' used in 1973 labeling. The use of the percent DV concept has been supported by consumer studies (58 FR 2079). The IOM Committee concluded that the rationale to use percent DV was compelling and suggested no alternative approach.

• *The DVs should be based on a population-weighted reference value using census data and proportions of each life stage and gender group*. The IOM Committee's rationale for using a population-weighted approach was that the DRIs for the various age and gender groups should be represented by the DV of the population in the same proportions. A DV defined this way would represent a central value of the requirement of the base population, with individual requirements varying around this value.

As discussed previously in this document, the population-weighted approach is one of two approaches for setting one DV for all individuals 4 years of age and older. Currently, FDA uses the population-coverage approach for setting a single DV which represents the highest recommended intake level among all life stage and gender groups, excluding pregnant and lactating women. Although the degree of change will differ for each nutrient, the DV would be lower using the population-weighted approach for most nutrients when compared to a DV derived using the population-coverage approach (see tables 11a and 11b of this document). Note that if the DV for a nutrient is increased, then a serving of food would have a lower percent DV on the Nutrition Facts label.

TABLE 11A. COMPARISON OF THE CURRENT DVS WITH THE EAR, RDA, AND UL USING THE POPULATION-COVERAGE OR POPULATION-WEIGHTED APPROACH

Nutrient	Unit of Measure	Current DV	Highest RDA	Weighted RDA[1]	Highest EAR	Weighted EAR[1]	UL 4 to 8 years[2]
Nutrients Assigned an EAR and RDA							
Copper	mg	2.0	0.9	0.8	0.7	0.7	3
Folate	µg	400	400	378	330	304	400
Iodine	µg	150	150	144	95	91	300
Iron	mg	18	18	11	8	6	40
Magnesium	mg	400	420	341	350	283	110
Molybdenum	µg	75	45	42	34	32	600
Niacin	mg	20	16	14	12	11	15
Phosphorus	mg	1,000	1,250	769	1,055	640	3,000
Protein	g	50	56	47	46	39	-
Riboflavin	mg	1.7	1.3	1.1	1.1	0.9	—
Selenium	µg	70	55	52	45	43	150
Thiamin	mg	1.5	1.2	1.1	1.0	0.9	—
Vitamin A	IU	5,000	3,000	2,511	2,100	1,768	—
	µg	1,500 RE	900 RAE	754 RAE	630 RAE	531 RAE	900
Vitamin B_6	mg	2.0	1.7	1.3	1.4	1.1	40
Vitamin B_{12}	µg	6.0	2.4	2.3	2.0	1.9	—
Vitamin C	mg	60	90	74	75	61	650
Vitamin E	IU	30 IU	—	—	—	—	—
	mg α-tocopherol		15	14	12	11	300

TABLE 11A. COMPARISON OF THE CURRENT DVS WITH THE EAR, RDA, AND UL USING THE POPULATION-COVERAGE OR POPULATION-WEIGHTED APPROACH—Continued

Nutrient	Unit of Measure	Current DV	Highest RDA	Weighted RDA[1]	Highest EAR	Weighted EAR[1]	UL 4 to 8 years[2]
Zinc	mg	15	11	9.1	9.4	7.7	12

[1]Population-weighted means of life-stage and gender specific RDAs, EARs, AIs, and ULs were computed for adults and children 4 or more years of age, using 2005 Middle Series Data from Annual Projections of the Resident Population by Age, Sex, Race, and Hispanic Origin: Lowest, Middle, Highest, and Zero International Migration Series, 1999 to 2100 (NP-D1-A), (*http://www.census.gov/population/www/projections/natdet-D1A.htm*), U.S. Census Bureau, Population Projection Program , accessed July 19, 2006. Life-stage and gender specific RDAs, EARs, AIs, and ULs were multiplied by the population projection for the corresponding life-stage and gender group (e.g., children 4 to 8 years old, males 9 to 13 years old). Sum of these values were divided by the total population projection for adults and children 4 or more years of age.

[2]The ULs for vitamin E, niacin, and folate apply to synthetic forms obtained from supplements, fortified foods, or a combination of the two. The ULs for vitamin A apply only to preformed vitamin A. The ULs for magnesium represent intake from a pharmacological agent only and do not include intake from food and water.

RE=retinol equivalents, RAE=retinol activity equivalents

TABLE 11B. COMPARISON OF THE CURRENT DVS WITH THE AIS AND ULS USING THE POPULATION-COVERAGE OR POPULATION-WEIGHTED APPROACH

Nutrient	Unit Of Measure	Current DV	Highest AI	Weighted AI[1]	Highest UL	Weighted UL[1]	UL 4 to 8 years
Nutrients Assigned an AI							
Biotin	µg	300	30	28	—	—	—
Calcium	mg	1,000	1,300	1,091	—	—	2,500
Chloride	mg	3,400	2,300	2,150	3,600	3,536	2,900
Choline	mg	550[2]	550	460	—	—	1,000
Chromium	µg	120	35	27	—	—	—
Fiber	g	25	38[3]	29[3]	—	—	—
Linoleic acid	g	—	17	13	—	—	—
α-Linolenic acid	g	—	1.6	1.3	—	—	—
Manganese	mg	2.0	2.3	1.9	—	—	3
Pantothenic acid	mg	10	5	5	—	—	—
Potassium	mg	3,500	4,700	4,622	—	—	—
Sodium	mg	2,400[4]	1,500	1,410	2,300	2,265	1,900
Vitamin D	IU	400	600	280	—	—	—
	µg	10	15	7			50
Vitamin K	µg	80	120	95	—	—	—
Fluoride	mg	—	4	3	—	—	2.2

[1]Population-weighted means of life-stage and gender specific RDAs, EARs, AIs, and ULs were computed for adults and children 4 or more years of age, using 2005 Middle Series Data from Annual Projections of the Resident Population by Age, Sex, Race, and Hispanic Origin: Lowest, Middle, Highest, and Zero International Migration Series, 1999 to 2100 (NP-D1-A), (*http://www.census.gov/population/www/projections/natdet-D1A.htm*), U.S. Census Bureau, Population Projection Program , accessed July 19, 2006. Life-stage and gender specific RDAs, EARs, AIs, and ULs were multiplied by the population projection for the corresponding life-stage and gender group (e.g., children 4 to 8 years old, males 9 to 13 years old). Sum of these values were divided by the total population projection for adults and children 4 or more years of age.

[2]A notification was submitted under section 403(r)(2)(G) of the act (21 U.S.C. 343(r)(2)(G)) in 2001 for the use of certain nutrient content claims for choline. These statements identify the daily value for choline as 550 mg (see footnote 5 of this document). This value is based on the AI set by the IOM of the NAS in 1998 (Refs. 9 and 20).

[3]Based on AI of 14g/1,000 calories.

[4]Daily reference value to not be exceeded.

• *A population-weighted EAR should be the basis for DVs for those nutrients for which EARs have been identified.* The Committee's rationale for using an EAR, rather than the RDA, to set the DV was the Committee's belief that the EAR represents the most accurate representation of the true contribution of food to total nutrient needs in the general population.

Currently, the RDIs are based on RDAs, when available. There are 16 nutrients for which the DV is currently based on an RDA and now have a new EAR and RDA.[6] Because the RDA is 2 standard deviations greater than the

[6]Currently there are DVs that were based on RDAs for vitamin A, vitamin C, iron, vitamin E, thiamin, riboflavin, niacin, vitamin B6, folate, vitamin B12, phosphorous, iodine, magnesium, zinc, selenium, and protein.

EAR, a DV based on an EAR would be lower than when based on the RDA (see table 11a of this document). The population-weighted EAR yields the lowest values compared to population-coverage RDA, population-weighted RDA, or population-coverage EAR (see table 11a of this document). The population-weighted EAR can vary from as little as 21 percent lower than the population-coverage RDA for vitamin B_{12}, to 41 percent lower for vitamin A, to as much as 67 percent lower for iron.

• *If no EAR has been set for a nutrient, then a population-weighted AI should be used as the basis for a DV.*

An AI is a proxy for an RDA, however, the AI is not the equivalent of an EAR. Thus, when an AI is set for a nutrient, there is no other recommended intake level that is set for that nutrient. AIs were determined for 15 nutrients (tables 2 and 3 of this document). As can be seen in table 11b of this document, a reference value for labeling based on a population-weighted AI is lower for most nutrients than a reference value that is derived based on the population-coverage approach that uses the highest AI. As discussed previously in this document, AIs for children and adults were based on experimental data that were not sufficient for setting an EAR or were based on median intake levels. The IOM labeling report did not address the issue of whether AIs based on either approach should or should not be considered in setting a DV. The IOM labeling report did not address the AIs set for sodium and potassium because the IOM DRI report on electrolytes and water was not completed (Ref. 14).

• *The AMDR should be the basis for the DVs for protein, total carbohydrate, and total fat.* The IOM labeling committee recommended that using the AMDRs to set reference values for protein, total carbohydrate, and total fat is appropriate to promote healthful dietary practices and nutritionally adequate diets and would provide consistency. Because the IOM set AMDRs (percent of energy) for all three macronutrients, the IOM Committee recommended setting the DV based on the following: (1) The midpoint of the AMDR for carbohydrate (starch and sugars), (2) a population-weighted midpoint of the AMDR for total fat since AMDRs varied for age, and (3) the difference (100 percent of energy - (DV_{fat} + $DV_{carbohydrate}$)) for protein. The IOM Committee stated that using the midpoint of the AMDR values avoids extreme values from the upper or lower boundaries and is an approach that focuses on moderation. The IOM Panel on Macronutrients did not set a UL for total or added sugars, but identified a suggested maximum intake level of no more than 25 percent of energy from added sugars. However, the IOM Committee recommended against using this value for nutrition labeling because it could be misrepresented as a desirable intake level. Although the IOM panel on macronutrients set an AMDR for protein, they also set EARs and RDAs for protein (see tables 11a and 12 of this document).

Currently, the DV for protein is based on 10 percent of 2,000 calories using an adjusted average of the 1989 RDA (Ref. 3). Although protein has a DV, the declaration of a percent DV for protein on the label is optional unless a claim is being made. The declaration of a percent DV for protein is optional due, in part, to the cost consideration of determining the protein digestibility-corrected amino acid score which is necessary to calculate the percent DV of protein (58 FR 2079 at 2102).

TABLE 12.—COMPARISON OF THE CURRENT DVS IN GRAMS TO THE LOWER, MIDPOINT, AND UPPER ACCEPTABLE MACRONUTRIENT DISTRIBUTION RANGES FOR A 2,000 CALORIE DIET

	Current DV		AMDR			AMDR		
Nutrient	Percent of Energy	Grams (for 2,000 calories per day)	Percent of energy			Grams (for 2,000 calories per day)[1]		
			Low	Midpoint	High	Low	Midpoint	High
Adults								
Protein	10	50	10	22.5	35	50	112.5	175
Fat	30[2]	65	20	27.5	35	44.4	61.1	77.7
Linoleic acid	—	—	5	7.5	10	11	17	22
α-Linolenic	—	—	0.6	0.9	1.2	1.3	2	2.7
Carbohydrate	60	300[3]	45	55.0	65	225[4]	275[4]	325[4]
Protein by difference				17.5			87.5	
Total energy	100			100				
Children Age 4 to 18 Years								
Protein	10	50	10	20	30	50	100	150
Fat	30[2]	65	25	30	35	55.6	66	77.7
Linoleic acid	—	—	5	7.5	10	11	17	22
α-Linolenic	—	—	0.6	0.9	1.2	1.3	2	2.7
Carbohydrate	60	300[3]	45	55	65	225[4]	275[4]	325[4]
Protein by difference				15			75	
Total energy	100			100				

TABLE 12.—COMPARISON OF THE CURRENT DVS IN GRAMS TO THE LOWER, MIDPOINT, AND UPPER ACCEPTABLE MACRONUTRIENT DISTRIBUTION RANGES FOR A 2,000 CALORIE DIET—Continued

Nutrient	Current DV		AMDR			AMDR		
	Percent of Energy	Grams (for 2,000 calories per day)	Percent of energy			Grams (for 2,000 calories per day)[1]		
			Low	Midpoint	High	Low	Midpoint	High
Age 4 Years and Older (Weighted per IOM Labeling Report, Table B–4)								
Fat[5]	30[2]	65	21	28	35	46.7	62	77.7
Linoleic acid	—	—	5	7.5	10	11	17	22
α-Linolenic	—	—	0.6	0.9	1.2	1.3	2	2.7
Carbohydrate[6]	60	300[3]	45	55	65	225[4]	275[4]	325[4]
Protein by difference[7]			34	17	0	170	85	0
Total energy				100				

[1]Derived by converting percent energy to g/d using Atwater factors 4 calories/g for carbohydrates and protein and 9 calories/d for fat for a 2,000 calories diet.
[2]Based on a Dietary Guideline recommendation of no more than 30 percent of energy from fat.
[3]Carbohydrate represents sugars, starch, fiber, and organic acids.
[4]Carbohydrate represents starch and sugars.
[5]The AMDR for total fat is comprised of population-weighted values computed based on U.S. Census Bureau estimates of the U.S. population in 2005.
[6]No weighting was done for this group.
[7]Calculated using the difference (100 percent of energy - (DV_{fat} + $DV_{carbohydrate}$)) for protein.

For the purpose for food labeling, total carbohydrate in food is currently calculated by subtraction of the sum of crude protein, total fat, moisture, and ash from the total weight of the food and includes starch, sugars, sugar alcohols, and fiber (§ 101.9(c)(6)). The current DV for total carbohydrate is based on the 100 percent of energy minus the sum of the DV for fat (30 percent) plus the DV for protein (10 percent). Thus, the DV is 60 percent of a 2,000 calorie diet (300 g) for total carbohydrate. In contrast to the calculation of total carbohydrates (§ 101.9(c)(6)), the IOM panel on macronutrients set an AMDR for carbohydrates and also set an EAR and RDA for carbohydrate that specifically represents starch and sugars, but does not include sugar alcohols or fiber (see tables 8, 10, and 12 of this document). Therefore, the recommendation by the IOM Committee to use the AMDR for setting a DV for total carbohydrate would limit the definition and corresponding DV to sugars and starch.

The current DV for fat (65 g) is based on the NAS Diet and Health Report (Ref. 4) which recommended no more than 30 percent of energy from fat and represents triglyceride content (§ 101.9(c)(2)). The IOM panel on macronutrients set AMDRs for total fat and fatty acids linoleic and α-linolenic acid (see table 12 of this document). The IOM panel on macronutrients also set AIs for linoleic and α-linolenic acid (see table 11b of this document).

Table 12 of this document shows the current DV, the lowest, the midpoint, and the highest value for each AMDR set by the IOM DRI panel on macronutrients, and the AMDRs adjusted using the population-weighted approach. As can be seen in table 12 of this document for fat, linoleic acid, α-linolenic acid, and carbohydrate, the lowest, the midpoint, and the highest AMDR values are similar to the values obtained using the population-weighted AMDRs. The approach that was recommended by the IOM Committee, i.e., using the midpoint of the AMDR for fat and carbohydrate as the basis for label reference values, would yield values of 62 g/d of fat, 85 g/d protein, and 275 g/d carbohydrate.

• *Two thousand calories should be used, when needed, as the basis for expressing energy intake when developing DVs.* Although EERs were set for all life-stage groups (Ref. 13), the IOM Committee recognized that the EERs are dependent upon height, weight, and physical activity level. In addition, the EER equations are based on normal weight individuals, and the United States has a high prevalence of obese and overweight individuals (64 percent of adults and 15 percent of children) (Ref. 16). The IOM Committee found that the data necessary to use the EER to derive a calorie reference value is incomplete. Therefore, the IOM Committee recommended retaining the current 2,000 calorie reference level (Ref. 16).

• *The DVs for saturated fatty acids, trans fatty acids, and cholesterol should be set at a level that is as low as possible in keeping with an achievable health-promoting diet.* The rationale for this recommendation is based on the DRI macronutrient report (Ref. 13) which did not set ULs but recommended that saturated fatty acid, *trans* fatty acid and cholesterol intakes should be as low as possible while consuming a nutritionally adequate diet. The current DV for saturated fat (not more than 10 percent of energy (20 g/d) and cholesterol (300 mg/d)) is based on the NAS Diet and Health Report (Ref. 4).

For FDA to establish a DV for *trans* fatty acids, saturated fat, and cholesterol, the IOM Committee suggested that FDA use food composition data, menu modeling, and data from dietary surveys to estimate minimum intakes consistent with nutritionally adequate and health-promoting diets for diverse populations. In April of 2004, FDA held a meeting of the Nutrition Subcommittee of the Food Advisory Committee on total fat and *trans* fat (the subcommittee) (Ref. 23). The subcommittee concluded that currently there is not enough scientific evidence to recommend a specific acceptable daily intake for *trans* fatty acids.

• *While the general population is best identified as all individuals 4 years of age and older, four distinctive life stages were identified for developing separate DVs: Infants (< 1 year), toddlers (1 to 3 years), pregnancy, and lactation.* Because infants, toddlers, and pregnant women and lactating women have specific nutritional needs, the IOM Committee stated that a single DV for the entire population could over- or underestimate the nutrient contribution

of foods for these four groups. Therefore, the IOM Committee recommended that separate DVs for foods manufactured specifically for these four groups be used for that specific life-stage group.

See discussion in section I.B.1 of this document on requirements for foods that are represented or purported to be for the use of infants (up to 12 months of age) or children 1 to 4 years of age, and pregnant women or lactating women.

• *The Supplement Facts label should use the same DVs as the Nutrition Facts label.* The IOM Committee recommended that all other guiding principles should apply to dietary supplement labeling. The IOM Committee came up with this recommendation because the Supplement Facts label requires the inclusion of the percent DVs for the nutrients that are mandated for conventional food (21 U.S.C. 321(ff)). Therefore, the comparisons that are shown for the Nutrition Facts label in tables 11a and 11b of this document are the same for the Supplement Facts label.

• *Absolute amounts should be included in the Nutrition Facts and Supplement Facts labels for all nutrients.* The IOM Committee concluded that including absolute amounts (e.g., mg/serving) would assist consumers who want nutrient information but are yet unable to understand the percent DVs. Furthermore, absolute amounts for macronutrients are already required on the Nutrition and Supplement Facts labels. Therefore, the IOM Committee stated that adding absolute amounts for micronutrients would make the labeling consistent. The IOM Committee also recommended that the units used for vitamin A (IU), vitamin D (IU), vitamin E (IU), folate (μg), copper (mg), sodium (mg), potassium (mg) and chloride (mg) be changed to be consistent with the units in the new DRI reports (vitamin A (μg Retinol Activity Equivalents), vitamin D (μg), vitamin E (mg α-tocopherol), folate (μg dietary folate equivalents), copper (μg), sodium (g), potassium (g), and chloride (g)).

F. IOM Report on the Definition of Fiber

1. Definitions

Because there is not a formal definition for dietary fiber, dietary fiber is the material isolated using AOAC INTERNATIONAL Enzymatic-Gravimetric Method 985.29 (Ref. 12). This method includes lignin and nonstarch polysaccharides and some resistant starch, inulin, chitin, chitosan, chondroitin sulfate, and noncarbohydrate material. This method does not include oligosaccharides, polydextrose, or resistant maltodextrins. Currently, dietary fiber is indented under ''Total Carbohydrates'' in the Nutrition Facts label (§ 101.9(c)(6)(i)).

In 2001 the IOM Panel on the Definition of Dietary Fiber (the IOM Panel) responded to FDA's request to provide definitions for dietary fiber based on its role in human physiology and health. The IOM Panel developed two categories of definitions of fiber: ''Dietary Fiber'' and ''Functional Fiber'' (Ref. 12). See table 13 of this document from the IOM Report on the Definition of Dietary Fiber, which lists the characteristics of dietary fiber currently determined by FDA and by the IOM definitions for dietary and functional fibers.

TABLE 13.—CHARACTERISTICS OF VARIOUS DIETARY FIBER DEFINITIONS[1]

Reference	Nondigestible Animal CHOs[2]	CHOs Not Recovered by Alcohol Precipitation[3]	Nondigestible Mono- and Disaccharides	Lignin	Resistant Starch	Intact, Naturally Occurring Food Sources Only	Resistant to Human Enzymes	Specifies Physiological Effect
U.S. Food and Drug Administration (USFDA), 1987[4]	Yes	Some inulin	No	Yes	Some	No	No	No
Institute of Medicine (IOM) (Proposed), 2001								
Dietary Fiber	No	Yes	No	Yes	Some	Yes	Yes	No
Added Fiber	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

[1]All definitions are assumed to include nonstarch polysaccharides.
[2]CHO = carbohydrate.
[3]Includes inulin, oligosaccharides (3–10 degrees of polymerization), fructans, polydextrose, methylcellulose, resistant maltodextrins, and other related compounds.
[4]Method-based definition.
Source: Adapted from the IOM, ''Dietary Reference Intakes: Proposed Definition of Dietary Fiber,'' Washington, DC: National Academy Press, 2001.

a. *The IOM Panel defined ''Dietary Fiber'' as nondigestible carbohydrates and lignin that are intrinsic and intact in plants.* Nondigestible means that the material is not digested and absorbed in the human small intestine. Fractions of plant foods are still considered ''Dietary Fiber'' if the plants' cells and their three dimensional interrelationships remain largely intact. Examples of ''Dietary Fiber'' include cereal brans; resistant starch that is naturally occurring; naturally occurring oligosaccharides such as raffinose, stachyose, verbacose; and low molecular weight fructans. The known physiological benefits of foods containing ''Dietary Fiber,'' such as attenuation of postprandial blood glucose and cholesterol levels and improved laxation, are recognized.

b. *The IOM Panel defined ''Functional Fiber'' as isolated, nondigestible carbohydrates that have beneficial physiological effects in humans.* ''Functional Fibers'' can be isolated or extracted nondigestible carbohydrates, using chemical, enzymatic, or aqueous procedures or synthetically manufactured. Provided that one or more beneficial physiological effects are demonstrated in humans, examples of ''Functional Fiber'' would include isolated nondigestible animal carbohydrates, pectins or gums, resistant starch formed during processing, and synthetic fibers such as resistant maltodextrin and fructooligosaccharides. At this time, current FDA regulations have not established formal criteria for establishing the beneficial physiological effects of potential ''Functional Fibers.''

c. *The IOM Panel defined ''Total Fiber'' as the sum of ''Dietary Fiber''*

and ''Functional Fiber.'' Thus, while there is currently one category of dietary fiber in the Nutrition Fact label, the Panel has provided three definitions of fiber for potential use. The AI set by the IOM is for ''Total Fiber.''

2. Soluble and Insoluble Fiber

The IOM Panel recommended that the terms soluble and insoluble fiber be phased out and replaced with an appropriate physicochemical property (e.g., viscous or fermentable fiber) of the specific fiber as these become standardized. This recommendation is based on scientific findings that suggest that the physiological benefit of a fiber (e.g., attenuation of blood glucose and cholesterol concentration and improved laxation) is not related to the solubility of a fiber. There is evidence indicating that viscous fibers and fibers that are slowly, incompletely, or not fermented can provide beneficial physiological effects. The IOM Panel recommended that viscosity or fermentability of a fiber be considered as characteristics to distinguish ''Dietary Fibers'' and ''Functional Fibers'' that modulate gastric and small bowel function from those that provide substantial stool bulk which is affected by fiber solubility and may or may not affect gastric and small bowel function.

Currently, a statement of the number of grams of soluble (§ 101.9(c)(6)(i)(A)) and insoluble (§ 101.9(c)(6)(i)(B)) dietary fiber can be voluntarily declared and indented under dietary fiber and both are identified and quantified using AOAC INTERNATIONAL methods.

3. Analytical Issues

The IOM Panel recognized that adoption of the two definitions for fiber would challenge the currently available analytical methods, requiring changes to the current analytical methods. Particularly, separating out ''Dietary'' and ''Functional Fibers,'' of which there could be a potential overlap (e.g., resistant starch and dietary fibers that are extracted, concentrated, and added to foods (gums, cellulose, pectin)). The IOM Panel proposed modifications to the current methods. While further refinement of these methods is made, the IOM Panel indicated that it would be more practical to determine ''Total Fiber'' using the current methods.

G. Current Regulations on Trans Fat

In the **Federal Register** of July 11, 2003 (68 FR 41434), FDA amended its regulations on nutrition labeling to require *trans* fatty acids be declared in grams per serving in the nutrition label of conventional foods and dietary supplements (the 2003 *trans* fat final rule). No DV was established for *trans* fatty acids. Required labeling became effective on January 1, 2006.

In the **Federal Register** of July 11, 2003 (68 FR 41507), FDA published an ANPRM (the 2003 *trans* fat ANPRM) to solicit information and data that potentially could be used to establish new nutrient content claims about *trans* fatty acids; to establish qualifying criteria for *trans* fat in current nutrient content claims for saturated fatty acids and cholesterol, lean and extra lean claims, and health claims that contain a message about cholesterol-raising lipids; and, in addition, to establish disclosure and disqualifying criteria to help consumers make heart-healthy food choices. FDA also requested comments on whether it should consider statements about *trans* fat, either alone or in combination with saturated fat and cholesterol, as a footnote in the Nutrition Facts label or as a disclosure statement in conjunction with claims to enhance consumer understanding about cholesterol-raising lipids and how to use the information to make healthy food choices.

On March 1, 2004 (69 FR 9559), FDA reopened the comment period for the 2003 *trans* fat ANPRM to receive comments that considered the information in the 2003 IOM report on nutrition labeling (Ref. 16) that addressed the labeling of *trans* fat (see section II.E of this ANPRM). In addition to the questions raised in the 2003 *trans* fat ANPRM, FDA sought comments on the 2003 IOM labeling report's approach to establish a DV using food composition data, menu modeling, and dietary survey data to estimate a minimum *trans* fat intake within a nutritionally adequate diet. FDA also sought comment on whether the IOM approach of using food composition data, menu modeling, and dietary survey data should be used to revise the DV for saturated fat. Public comments were also sought on the IOM recommendation to list saturated fat and *trans* fat on separate lines of the Nutrition Facts label, but have one numerical value for the percent DV for these two nutrients together. In addition, if FDA were to use one numerical value for the percent DV for both *trans* fat and saturated fat together, the agency asked for comment about whether such value should be determined by adding a new DV established for saturated fat to the DV for *trans* fat, or, alternatively, whether the agency should establish a joint DV for saturated and *trans* fats that would then be used to calculate one numerical value as the percent DV for both fats.

On April 19, 2004 (69 FR 20838), FDA extended the comment period for the 2003 *trans* fat ANPRM to receive comments that considered the information in the 2004 subcommittee meeting (Ref. 23) that addressed whether the available scientific evidence supports listing the percent DV for saturated fat and *trans* fat together or separately on the Nutrition Facts label and what the maximal daily intake of *trans* fat may be.

Because of their relevance to the Nutrition Facts label, FDA intends to consider, as comments to this ANRPM, the comments to the 2003 *trans* fat ANPRM on the IOM approach for calculating a DV for saturated fat and *trans* fat and listing of saturated and *trans* fats on separate lines of the Nutrition Facts label with one numerical value for the percent DV for both, and how to calculate the percent DV as one numerical value. Comments to the 2003 *trans* fat ANPRM on the outcome of the subcommittee meeting will also be considered. Public comments on these issues are being asked again in this ANPRM so that these issues can be considered in the context of the entire Nutrition Facts and Supplement Facts labels along with other questions being asked in this ANPRM.

H. ANPRM on Prominence of Calories

In the **Federal Register** of April 4, 2005 (70 FR 17008), FDA published an ANPRM on the prominence of calories on the food label (the 2005 ANPRM). The 2005 ANPRM was issued in response to recommendations from the Obesity Working Group (OWG) created by the Commissioner of Food and Drugs to develop an action plan to address the growing incidence of obesity in the United States. The 2005 ANPRM, in part, requested comments on whether giving more prominence to the declaration of calories per serving would increase consumer awareness of the caloric content of the packaged food. FDA also sought comment of whether providing a percent DV for total calories would help consumers understand the caloric content of the packaged food in the context of a 2,000 calorie diet. In addition, FDA also requested comments on questions posed concerning the declaration of ''calories from fat'' (70 FR 17008 at 17010). Because of their relevance to the Nutrition Facts label, FDA intends to consider, as comments to this ANRPM, comments to the 2005 prominence of calories ANPRM related to questions posed on a percent DV for total calories and calories from fat. Public comments on the specific question about establishing a percent

DV for total calories and the questions posed concerning ''calories from fat'' are being requested in this ANPRM so that these questions can be considered in the context of the entire Nutrition Facts and Supplement Facts labels along with other questions being asked in this ANPRM.

I. Carbohydrate Content of Food

FDA received nine citizen petitions that requested, among other things, that the agency amend our nutrition labeling requirements related to the declaration of total carbohydrate content of foods.[7] With respect to carbohydrate labeling, the agency is requesting comment in this ANPRM on questions related to the label declaration of carbohydrate in the Nutrition Facts and Supplement Facts labels (see section II.C.10 of this document).

J. ''2005 Dietary Guidelines for Americans''

The ''2005 Dietary Guidelines for Americans'' (the 2005 Dietary Guidelines) developed jointly by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture provide several key numerical recommendations with respect to micronutrients and macronutrients, of which most are based on the DRI reports (Ref. 7). These recommendations are as follows:

- Consume less than 10 percent of calories from saturated fat and less than 300 mg/d of cholesterol. These recommendations are the same as the current DRVs for saturated fat and cholesterol.
- Keep total fat intake between 20 and 35 percent of calories, the AMDR for total fat.
- Consume less than 2,300 mg/d of sodium, the UL for sodium.

The 2005 Dietary Guidelines also identified nutrients of concern based on dietary intake data or evidence of public health problems. The nutrients of concern are identified for:

- Adults: Calcium, potassium, fiber, magnesium, and vitamins A (as carotenoids), C, and E;
- Children and adolescents: Calcium, potassium, fiber, magnesium, and vitamin E.

The 2005 Dietary Guidelines also identified nutrients of concern for specific populations groups. Vitamin B12 was identified as a nutrient of concern for people over the age of 50. Iron was identified as a nutrient of concern for women of childbearing age who may become pregnant. Folic acid was also identified as a nutrient of concern for women of childbearing age who may become pregnant and those in the first trimester of pregnancy. Vitamin D was identified as a nutrient of concern for older adults, people with dark skin, and people exposed to insufficient ultraviolet band radiation (i.e., sunlight).

[7]The nine citizen petitions can be found in Docket Nos. 2004P–0105/CP1, 2004P–0107/CP1, 2004P–0110/CP1, 2004P–0297/CP1, 2004P–0298/CP1, 2004P–0299/CP1, 2004P–0293/CP1, 2004P–0473/CP1, 2004P–0542/CP1.

II. Agency Request for Information

FDA has not updated or set new DVs since 1995. In 2003, the IOM completed its first review of nutrients using the DRI process. This review has generated discussion in the scientific community. FDA plans to revise the reference values used for the Nutrition Facts and Supplement Facts labels. FDA requests comments on the following questions. As part of the comments, FDA requests that scientific justification be submitted in support of the response. FDA recognizes that an individual commenter may choose to respond to all of the questions or only a subset, based on his/her area of expertise.

A. Approach to Setting DVs

As discussed in section I.D of this document, beginning in 1997, the IOM began publishing a series of reports on reference intake levels, collectively known as the DRIs. The DRIs provided revised RDAs and three new reference intakes for nutrients (AI, EAR, and UL). The IOM also reported on AMDRs for macronutrients. FDA requests comments on the following questions on which DRIs and AMDRs should be used for setting DVs.

- Should the DV be based on an EAR for those nutrients for which an EAR has been set? Explain why or why not.
- If EARs are used to set DVs, should they be set based on population-coverage or population-weighted EAR? Explain why you have chosen a particular approach and why it is preferable to the other approach. Explain why or why not.
- Should the DV be set based on an RDA for those nutrients for which an RDA has been set? Explain why you have chosen a particular approach and why it is preferable to the other approach.
- If RDAs are used to set DVs, should they be set based on population-coverage or population-weighted RDA? Explain why you have chosen a particular approach and why it is preferable to the other approach.
- Should any or all AIs, regardless of how they are derived, be used to set DVs? Explain why or why not. Or, should only those AIs based on experimental data be used to set DVs (i.e., from intervention studies that are designed to evaluate nutrient requirements rather than dietary intake data from national surveys)? Explain why or why not.
- If AIs are used to set DVs, should they be set based on population-coverage or population-weighted AI? Explain why you have chosen a particular approach and why it is preferable to the other approach.

B. Populations for Which the DVs are Intended

Currently the DVs are for persons 4 years of age and older. FDA requests comments on the following questions on the populations for which the DVs should be intended.

- Should the DVs continue to be used for persons 4 years of age and older? Explain why or why not.
- Should DVs for different life stage groups be developed for labeling of food products specific to these groups, as recommended in the IOM labeling report (i.e., separate DVs: Infants (< 1 year), toddlers (1 to 3 years), pregnancy, and lactation)? Explain why or why not.

If so,

- Should DVs for infants (< 1 year) be set based on the EARs, RDAs, or AIs for older infants (7 to 12 months)? Explain why you have chosen a particular approach and why it is preferable to the other approaches.
- Should DVs for toddlers (1 to 3 years) be set based on the EARs, RDAs, or AIs for toddlers (1 to 3 years)? Explain why you have chosen a particular approach and why it is preferable to the other approaches.
- Should DVs for pregnant women be set based on the population-weighted or population-coverage EARs, RDAs, or AIs for all DRI pregnancy groups (i.e. 14 to 18 years, 19 to 30 years, 31 to 50 years)? Explain why you have chosen a particular approach and why it is preferable to the other approaches.
- Should DVs for lactating women be set based on the population-weighted or population-coverage EARs, RDAs, or AIs for all DRI lactation groups (i.e. 14 to 18 years, 19 to 30 years, 31 to 50 years)? Explain why you have chosen a particular approach and why it is preferable to the other approaches.

C. Labeling of Individual Nutrients

FDA requests comments on the following questions on individual nutrients:

1. Calories

- Should 2,000 calories continue to be used to express reference energy intake, as recommended in the IOM

labeling report? Explain why or why not.

• Should 2,500 calories also be kept on the label footnote? Explain why or why not.

• Should the EER (Estimated Energy Requirements) be used to express reference energy intake? Explain why or why not.

• If a population-weighted EER or a population-coverage EER should be used, which PAL (sedentary, low active, active, very active) should be used to calculate the EER? Explain why you have chosen a particular approach and why it is preferable to the other approaches.

• Would providing for a percent DV disclosure for total calories assist consumers in understanding the caloric content of the packaged food in the context of a 2,000 calorie diet? Explain why or why not.

2. Calories From Fat

• What data are there on how consumers use the listing of ''Calories from fat?''

• How does the listing ''Calories from fat'' adjacent to ''Calories'' affect consumers' focus on the total calories of a food?

• What are the advantages or disadvantages of eliminating the listing for ''Calories from fat'' from the nutrition label?

• What data would be needed to determine whether the listing of ''Calories from fat'' is or is not necessary to assist consumers in maintaining healthy dietary practices?

3. Calories From Saturated Fat

• Should calories from saturated fat continue to be voluntary or should it be made mandatory on the food label? Explain why you have chosen a particular approach and why it is preferable to the other approach.

4. Total Fat

• Should a population-weighted midpoint of the AMDR (e.g. 28 percent for adults) be used, as suggested in the IOM labeling report? Explain why or why not.

Note: 28 percent of 2,000 calories/d is 560 calories/d. 560 calories/d divided by 9 calories/g is 62 g/d.

• Should the upper range of AMDR of 35 percent be used? Explain why or why not.

Note: This would increase the DRV from 65g/d to 78 g/d for 2,000 calorie diet. 35 percent of 2,000 calories is 700 calories. 700 calories divided by 9 calories/g is ~ 78g.

5. Saturated Fat

• Should the current DRV of 20g/d from saturated fat remain, as recommended by the 2005 Dietary Guidelines? Explain why or why not.

• Should food composition data, menu modeling, and data from dietary surveys be used to establish a DRV for saturated fat that is as low as possible while consuming a nutritionally adequate diet, as recommended in the IOM labeling report? Explain why or why not.

6. *Trans* Fat

• Should food composition data, menu modeling, and data from dietary surveys be used to establish a DRV for *trans* fat that is as low as possible while consuming a nutritionally adequate diet, as recommended in the IOM labeling report? Explain why or why not.

• Should saturated fat and *trans* fat be listed on separate lines of the Nutrition Facts label, but have one numerical value for the percent daily value for these two nutrients together, as recommended in the IOM labeling report? Explain why or why not.

• If one numerical value is used for the percent DV for both *trans* fat and saturated fat together, should such value be determined by adding the DV for saturated fat to the DV for *trans* fat, or, alternatively, should the agency directly establish a joint DV for saturated and *trans* fats that would then be used to calculate one numerical value as the percent DV for both fats?

7. Polyunsaturated Fat

• Should polyunsaturated fat continue to be voluntary or should it be made mandatory on the food label? Explain why you have chosen a particular approach and why it is preferable to the other approach.

• Should a DRV for polyunsaturated fat (*n*-3 plus *n*-6) be established using the AMDRs for *n*-6 (5–10 percent) and *n*-3 (0.6–1.2 percent) of total calories? If so, should the midpoint be used? Explain why or why not.

Note: 7.5 percent (midpoint) for n-6 and 0.9 percent (midpoint) for n-3 of 2,000 calories =19g/d polyunsaturated fat.

• Should a DRV for polyunsaturated fat be derived based upon AIs for linoleic acid (*n*-6 polyunsaturated fat) plus α-linolenic acid (*n*-3 polyunsaturated fat)? Explain why or why not.

• Should separate DRVs for linoleic acid (*n*-6 polyunsaturated fat) and α-linolenic acid (*n*-3 polyunsaturated fat) be established? Explain why or why not.

• If separate DRVs for linoleic acid (*n*-6 polyunsaturated fat) and α-linolenic acid (*n*-3 polyunsaturated fat) are established should they be voluntary or should they be made mandatory on the food label? Explain why you have chosen a particular approach and why it is preferable to the other approach.

8. Monounsaturated Fat

• Should monounsaturated fat continue to be voluntary or should it be made mandatory on the food label? Explain why you have chosen a particular approach and why it is preferable to the other approach.

9. Cholesterol

• Should the current cholesterol DRV of 300 mg/d remain, as recommended by the ''2005 Dietary Guidelines for Americans''? Explain why or why not.

• Should food composition data, menu modeling, and data from dietary surveys be used to establish a DRV for cholesterol that is as low as possible while consuming a nutritionally adequate diet, as recommended in the IOM labeling report? Explain why or why not.

10. Carbohydrate

• Should the current approach for calculating grams of total carbohydrate by difference (see section I.E of this document) continue to be used? Explain why or why not. If not, what other approach or method do you recommend? If so, what should be included or excluded in the current calculation of ''total carbohydrate''?

• The 2005 Dietary Guidelines recommends consuming fiber-rich foods. Would the separation of dietary fiber from the ''total carbohydrate'' declaration in nutrition labeling affect consumer understanding of label information and its application to dietary guidelines and what would be the impact, if any, on fiber consumption?

• Should ''sugars'' continue to be included in the Nutrition Facts label?

• Should additional types of carbohydrate (e.g., starch) be listed separately in the Nutrition Facts label? Explain why or why not.

• Should carbohydrates be classified and declared in nutrition labeling based on their chemical definition or on their physiological effect? Explain why you have chosen a particular approach and why it is preferable to the other approach. If based on a physiologic effect, should the DV for carbohydrate (i.e., sugars and starch) be based on the midpoint of the AMDR (i.e., 55 percent)? Explain why or why not.

Note: 55 percent of 2,000 calories/d is 1,100 calories. 1,100 calories divided by 4 calories/g would be 275 g/d.

11. Dietary Fiber

- Should FDA continue to use the AOAC INTERNATIONAL methods to determine dietary fiber? If not, what other or additional methods should be used?
- Should the IOM dietary fiber and/or functional fiber definitions replace the current FDA definition for dietary fiber? Explain why or why not.
- Do you recommend another name for functional fiber? If so, what do you recommend and why?
- Until FDA identifies functional fibers and analytical methods are established for distinguishing functional fiber from dietary fiber, should total fiber be used on the label to represent dietary fiber? Explain why or why not.

12. Soluble and Insoluble Fiber

- Should soluble and insoluble fiber continue to be voluntary or should they be made mandatory on the food label? Explain why you have chosen a particular approach and why it is preferable to the other approach.
- Should the terms soluble fiber and insoluble fiber be changed to viscous and nonviscous fiber, as suggested by the IOM? Explain why or why not.

13. Sugar Alcohols

- Should sugar alcohols continue to be voluntary or should they be made mandatory on the food label? Explain why you have chosen a particular approach and why it is preferable to the other approach.
- How should the energy contribution of sugar alcohols be represented on the label since energy values vary (e.g., from 0.2 calories/g for erythritol to 3.0 calories/g for hydrogenated starch hydrolysates)?
- FDA has not defined how it would determine available energy from sugar alcohols. What analytical methods could be used to determine the energy contribution of sugar alcohols?

14. Protein

- Should the DRV be based on the approach recommended in the IOM labeling report (100 percent—(DV_{fat} + $DV_{carbohydrate}$))? Explain why or why not.
- Should the DRV be based on the midpoint of the AMDR for protein (i.e., 17 percent)? Explain why or why not. *Note: Based on 2,000 calories/d, the DRV would be 85 g/d.*
- Should the DRV for protein be based on the EAR or RDA for protein? Explain why you have chosen a particular approach and why it is preferable to the other approach.

15. Sodium

- Should the DRV for sodium be based on the UL for sodium (2,300 mg/d) as suggested by the 2005 Dietary Guidelines for Americans or should it be based on the AI (1,500 mg/d using the population-coverage approach)? Explain why you have chosen a particular approach and why it is preferable to the other approach.
- If the UL should be used, should it be adjusted using the same approach (population-weighted or population-coverage) as the other DRIs? Explain why or why not.

16. Chloride

The IOM set an AI and UL for chloride on an equi-molar basis to that of sodium since most sodium is consumed in the form of sodium chloride.

- Should the DV for chloride continue to be an RDI, or should it be a DRV like sodium? Explain why you have chosen a particular approach and why it is preferable to the other approach.
- Should the DV for chloride be based on the same DRI (AI versus UL) as used to set a DV for sodium? Explain why or why not.

17. Vitamins and Minerals

Currently vitamin A, vitamin C, calcium, and iron are mandatory on the food label because they were considered to be of public health concern.

- Are vitamin A, vitamin C, calcium, and iron still considered to be of public health concern? Explain why or why not.
- Are there other micronutrients that should be of public health concern? Please be specific in describing what, if any, other micronutrients are of public health concern and why.
- For those nutrients given an AI under the DRI process, but currently have a DV based on an earlier RDA (e.g., calcium, vitamin K, vitamin D, pantothenic acid, biotin), should the current DV be retained or should the newer AI be used to develop a new DV? Explain why you have chosen a particular approach and why it is preferable to the other approach.
- Currently there is no DV for fluoride. Since the IOM established an AI for fluoride, should there be a DV for fluoride? Explain why or why not.

D. Other Questions

- Should the IUs that are currently used for the DVs for vitamins A, D, and E be changed to µg RAE (retinol activity equivalents), µg, and mg α-tocopherol, respectively? Explain why or why not.
- Should the current DV units for folate (µg), copper (mg), chloride (mg), potassium (mg), and sodium (mg) be changed to be consistent with the units in the IOM DRI reports (folate (µg dietary folate equivalents), copper (µg), chloride (g), potassium (g), and sodium (g))? Explain why or why not.
- Should the Supplement Facts label use the same DVs as the Nutrition Facts label, as suggested in the IOM labeling report? Explain why or why not.
- Should absolute amounts (e.g., grams or milligrams) be included in the Nutrition Facts and Supplement Facts labels for mandatory and voluntary nutrients? Explain why or why not.

E. Process Questions

The following question seeks information on the process issues related to the Nutrition and Supplement Facts labels.

- If FDA includes functional fiber in the Nutrition Facts labels, should FDA develop criteria for identifying fibers that meet the definition of functional fiber (i.e., demonstrates a physiological benefit)? If so, what should those criteria be?

F. Questions on Consumer and Producer Use and Understanding of DVs

To help determine which regulatory options might address problems associated with food package labels reflecting current DVs, we request comments including available data on the following questions:

- In the 2002 Health and Diet Survey (Ref. 24), respondents were asked how they use the Nutrition Facts label. The most common answers were as follows: (1) To see if the product was high or low in a specific nutrient, (2) to get a general idea of the nutritional content of food, and (3) to decide which brand to purchase and to compare different food items. Do you have information indicating how the percent DV found in the Nutrition Facts label facilitates any of these uses by consumers? For which food products and nutrients?
- Currently, a percent DV is required for most nutrients listed in the Nutrition Facts label. Do you have any information indicating that there are nutrients for which consumers would value percent DV information, but such nutrients are not currently found in the Nutrition Facts label?
- Do you have information suggesting the degree to which the percent DV is helpful for making purchases? For which food products? For which nutrients?
- Do you have information suggesting differences between the degree to which the percent DV is helpful for making

purchases intended for consumers 4 years of age and older, children younger than 4 years of age, infants, and pregnant women and lactating women? For which food products? For which nutrients?

The following questions address information needed by FDA to analyze the implications of changes in the percent DVs on consumer and producer behavior.

- Do you have any information suggesting that changes in percent DV (higher or lower), for a nutrient per serving, would cause consumers to reduce their consumption of some products or product categories and increase their consumption of other products or product categories? If so, changes in the percent DVs of which nutrients would cause changes in the consumption of which products or product categories? Why?
- If changes in the percent DVs of some nutrients would alter the eligibility of some products or product categories to make nutrient content claims or health claims, do you have any information suggesting that manufacturers would reformulate or re-label some of their products in order to make a nutrient content claim or a health claim? If so, changes in the percent DVs of which nutrients would cause which products or product categories to be reformulated in order to make a nutrient content claim or health claim?
- If changes in the percent DVs of some nutrients would cause some products or product categories to be reformulated or re-labeled in order to make a nutrient content claim or a specific health claim, do you have any information suggesting that there are public health effects from changes in nutrient intakes and consumption behavior of newly reformulated or re-labeled products or product categories that make these claims? If so, what are the public health effects from changes in nutrient intakes and from changes in the consumption behavior of which newly reformulated products or product categories?
- The length of time to comply with any regulation requiring revision to product labels may introduce confusion on the part of consumers during a transition period in which two different percent DVs would be reflected on labels of otherwise identically formulated products. Do you have information suggesting the extent to which such confusion might exist for compliance periods of 6 months, 12 months, and 24 months? For which food products?

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. National Research Council (NRC), ''Recommended Dietary Allowances, Seventh Edition,'' Washington, DC: National Academy Press, 1968.
2. NRC, ''Recommended Dietary Allowances, Ninth Edition,'' Washington, DC: National Academy Press, 1980.
3. NRC, ''Recommended Dietary Allowances, Tenth Edition,'' Washington, DC: National Academy Press, 1989.
4. NRC, Executive Summary, ''Diet and Health: Implications for Reducing Chronic Disease Risk,'' Washington, DC: National Academy Press, pp. 1 to 20, 1989.
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This ANPRM is issued under section 201 et al. of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et al.) and under authority of the Commissioner of Food and Drugs.

APPENDIX A

ACRONYMS USED IN THIS DOCUMENT

AI	Adequate Intake
AMDRs	Acceptable Macronutrient Distribution Ranges
ANPRM	Advance Notice of Proposed Rulemaking
CV	Coefficient of Variation
DRIs	Dietary Reference Intakes
DRV	Daily Reference Value
DV(s)	Daily Value(s)
EAR	Estimated Average Requirement
EER	Estimated Energy Requirement
ESADDIs	Estimated Safe and Adequate Daily Dietary Intakes
FDA	Food and Drug Administration
FLUNES	Food Label Use and Nutrition Education Surveys
IOM	Institute of Medicine
IU	International Units
NAS	National Academy of Sciences
NLEA	Nutrition Labeling and Education Act of 1990
OWG	Obesity Working Group
PAL	Physical Activity Level
RACC	Reference Amount Customarily Consumed
RDA	Recommended Dietary Allowance
RDI	Reference Daily Intakes
SD	Standard Deviation
TEE	Total Energy Expenditure
U.S. RDA	U.S. Recommended Daily Allowance
UL	Tolerable Upper Intake Level

Appendix B

Examples of Nutrition Facts and Supplement Facts Labels

Nutrition Facts

Serving Size 1 cup (228g)
Servings Per Container 2

Amount Per Serving	
Calories 260	Calories from Fat 120
	% Daily Value*
Total Fat 13g	20%
Saturated Fat 5g	25%
Trans Fat 2g	
Cholesterol 30mg	10%
Sodium 660mg	28%
Total Carbohydrate 31g	10%
Dietary Fiber 0g	0%
Sugars 5g	
Protein 5g	

Vitamin A 4%	•	Vitamin C 2%	
Calcium 15%	•	Iron 4%	

*Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Supplement Facts

Serving Size 1 Tablet

	Amount Per Serving	% Daily Value
Vitamin A (as retinyl acetate and 50% as beta-carotene)	5000 IU	100%
Vitamin C (as ascorbic acid)	60 mg	100%
Vitamin D (as cholecalciferol)	400 IU	100%
Vitamin E (as dl-alpha tocopheryl acetate)	30 IU	100%
Thiamin (as thiamin mononitrate)	1.5 mg	100%
Riboflavin	1.7 mg	100%
Niacin (as niacinamide)	20 mg	100%
Vitamin B_6 (as pyridoxine hydrochloride)	2.0 mg	100%
Folate (as folic acid)	400 mcg	100%
Vitamin B_{12} (as cyanocobalamin)	6 mcg	100%
Biotin	30 mcg	10%
Pantothenic Acid (as calcium pantothenate)	10 mg	100%

Other ingredients: Gelatin, lactose, magnesium stearate, microcrystalline cellulose, FD&C Yellow No. 6, propylene glycol, propylparaben, and sodium benzoate.

Supplement Facts

Serving Size 1 Packet

Amount Per Packet		% Daily Value
Vitamin A (from cod liver oil)	5,000 IU	100%
Vitamin C (as ascorbic acid)	250 mg	417%
Vitamin D (as ergocalciferol)	400 IU	100%
Vitamin E (as d-alpha tocopherol)	150 IU	500%
Thiamin (as thiamin mononitrate)	75 mg	5000%
Riboflavin	75 mg	4412%
Niacin (as niacinamide)	75 mg	375%
Vitamin B_6 (as pyridoxine hydrochloride)	75 mg	3750%
Folic Acid	400 mcg	100%
Vitamin B_{12} (as cyanocobalamin)	100 mcg	1667%
Biotin	100 mcg	33%
Pantothenic Acid (as calcium pentothenate)	75 mg	750%
Calcium (from oystershell)	100 mg	10%
Iron (as ferrous fumarate)	10 mg	56%
Iodine (from kelp)	150 mcg	100%
Magnesium (as magnesium oxide)	60 mg	15%

Amount Per Packet		% Daily Value
Zinc (as zinc oxide)	15 mg	100%
Selenium (as sodium selenate)	25 mcg	36%
Copper (as cupric oxide)	1 mg	50%
Manganese (as manganese sulfate)	5 mg	250%
Chromium (as chromium chloride)	50 mcg	42%
Molybdenum (as sodium molybdate)	50 mcg	67%
Potassium (as potassium chloride)	10 mg	< 1%
Choline (as choline chloride)	100 mg	*
Betaine (as betaine hydrochloride)	25 mg	*
Glutamic Acid (as L-glutamic acid)	25 mg	*
Inositol (as inositol monophosphate)	75 mg	*
para-Aminobenzoic acid	30 mg	*
Deoxyribonucleic acid	50 mg	*
Boron	500 mcg	*

* Daily Value not established

Other ingredients: Cellulose, stearic acid and silica.

BILLING CODE 4160–01–C

Dated: October 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–5440 Filed 11–1–07; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–0AR–2007–0510; FRL–8485–8]

Federal Implementation Plans for the Clean Air Interstate Rule: Automatic Withdrawal Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of a full State implementation plan (SIP) revision meeting the CAIR requirements. EPA believes it is appropriate for the FIP withdrawal to be automatic because to the extent EPA approves the State's full CAIR SIP, this corrects the deficiency that provided the basis for EPA's promulgation of the FIPs in that State.

In the ''Rules'' section of this **Federal Register**, we are issuing this action as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by December 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0510, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2007–0510.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2007–0510.
- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2007–0510, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2007–0510, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room 3334; Washington, DC. 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–HQ–OAR–2007–0510. 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 *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 and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the 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 www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Rulemaking actions related to the CAIR and the CAIR FIPs are also available at the EPA's CAIR Web site at *www.epa.gov/cair.*

FOR FURTHER INFORMATION CONTACT: Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, mail code C539–04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919–541–3347; fax number: 919–541–0824; e-mail address: *oldham.carla@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of a full SIP revision meeting the CAIR requirements. We have published a direct final rule making such amendments in the ''Rules'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory text for this proposal is identical to that for the direct final rule published in the ''Rules'' section of this **Federal Register**. For further information and the detailed rationale for this proposal, see the information provided in the direct final rule.

II. Does This Action Apply to Me?

This action does not propose any control requirements. It proposes to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of the CAIR SIP for the State. EPA promulgated the CAIR FIPs on April 28, 2006 (71 FR 25328). Categories and entities potentially regulated by the CAIR FIPs include the following:

Category	NAICS code[1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the CAIR FIPs. To determine whether your facility is affected by the CAIR FIPs, you should examine the definitions and applicability criteria in 40 CFR 97.102, 97.104, 97.105, 97.202, 97.204, 97.205, 97.302, 97.304, and 97.305. If you have any questions regarding the applicability of the CAIR FIPs to a particular entity, consult the person listed in the preceding section under **FOR FURTHER INFORMATION CONTACT**.

III. What Action Is EPA Proposing?

The EPA is proposing to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of a full SIP revision meeting the CAIR requirements. All CAIR States are required to revise their SIPs to include control measures to reduce emissions of nitrogen oxides and/or sulfur dioxide. The EPA issued the CAIR FIPs as a backstop to implement the CAIR in each CAIR State until that State has an EPA-approved CAIR SIP in place to achieve the required reductions. In the FIP rulemaking, EPA stated it would withdraw the FIPs in a State in coordination with the approval of the CAIR SIP for that State. EPA believes it is appropriate for the FIP withdrawal to be automatic because to the extent EPA approves the State's full CAIR SIP, this corrects the deficiency that provided the basis for EPA's promulgation of the FIPs in that State. The automatic withdrawal provision would not apply to EPA approvals of any abbreviated SIPs revisions submitted pursuant to 40 CFR 51.123(p), 40 CFR 51.123(ee) and 40 CFR 51.124(r). The detailed description of and rational for this proposal appears in the direct final rule published in the ''Rules'' section of this **Federal Register**.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action proposes to amend the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State once the State's CAIR SIP is in place. EPA believes that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requirements of the existing CAIR FIPs rule are satisfied through the Information Collection Request (ICR) (EPA ICR number 2152.02; OMB control number 2060–0570) submitted to the OMB for review and approval as part of the CAIR (70 FR 25162–25405) and approved by the OMB in September 2005. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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; 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.

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business ''as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201;'' (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. This proposal would not impose new requirements on any entities, but instead would provide for the automatic withdrawal of the CAIR FIPs in certain circumstances. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local,

and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector because this proposal would not impose new requirements on any entities, but instead would provide for the automatic withdrawal of the CAIR FIPs in certain circumstances. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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 proposed rule does not have federalism implications. It will not 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. This proposal would not impose an enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this proposal. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), 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.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175 because it would not impose an enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposal is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposal would not have

disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment. This action does not propose an enforceable duty on any State, local or tribal governments or the private sector. It would neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 17, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–20845 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7744]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 31, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7744, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Autauga County, Alabama, and Incorporated Areas				
Autauga Creek	1570 feet downstream from County Road 4	None	+159	City of Prattville, Unincorporated Areas of Autauga County.
	4370 feet upstream from Railroad	+278	+280	
Tributary 1	Confluence with Autauga Creek	+205	+199	City of Prattville.
	1050 feet upstream from confluence with Autauga Creek.	+207	+199	
Tributary 2	1254 feet upstream from confluence with Autauga Creek.	+204	+207	City of Prattville, Unincorporated Areas of Autauga County.
	16 feet upstream from Railroad	+226	+228	
Breakfast Creek	220 feet upstream from confluence with Autauga Creek.	None	+211	City of Prattville.
	235 feet upstream from Bridge Creek Road	None	+319	
Noland Creek	32 feet downstream from confluence with Dry Branch	None	+165	City of Prattville.
	3288 feet upstream from Copper Ridge Road	None	+304	
Pine Creek	At South Memorial Drive	+159	+163	City of Prattville.
	2440 feet upstream from confluence with Dunn Branch.	+307	+311	
Tributary 1	380 feet upstream from confluence with Pine Creek	+287	+289	City of Prattville.
	907 feet upstream from North Memorial Drive	+334	+332	
Tributary 2	430 feet upstream from Holly Court	+312	+314	City of Prattville.
	1520 feet upstream from Henderson Lane	+348	+350	
Tributary 3	330 feet upstream from confluence with Pine Creek Tributary 4.	+296	+301	City of Prattville.
	2095 feet upstream from confluence with Pine Creek Tributary 4.	+300	+313	
Tributary 4	15 feet upstream from confluence with Pine Creek Tributary 3.	+296	+297	City of Prattville.
	1240 feet upstream from confluence with Pine Creek Tributary 3.	+302	+310	
Rogers Branch	290 feet upstream from confluence with Noland Creek	None	+249	City of Prattville.
	7600 feet upstream from confluence with Noland Creek.	None	+393	
Swift Creek	6510 feet upstream from Highway 14 W	None	+155	Town of Autaugaville.
	7370 feet upstream from Highway 14 W	None	+157	
White Water Creek	2150 feet upstream from Highway 14 W	None	+157	Town of Autaugaville.
	3720 feet upstream from Highway 14 W	None	+162	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Prattville
Maps are available for inspection at 101 West Main Street, Prattville, AL 36067.

Town of Autaugaville
Maps are available for inspection at 109 North Taylor Street, Autaugaville, AL 36003.

Unincorporated Areas of Autauga County
Maps are available for inspection at 134 N. Court Street, Room 106, Prattville, AL 36067.

Jackson County, Alabama, and Incorporated Areas				
Bengis Creek Tributary	1180 feet upstream from County Route 85	None	+614	City of Stevenson.
	1195 feet upstream from County Route 85	None	+614	
Crow Creek	240 feet upstream from John T Reid Parkway	None	+607	City of Stevenson.
	790 feet upstream from County Route 53	None	+610	
Dry Creek	2300 feet upstream from Snodgrass Road	None	+608	Unincorporated Areas of Jackson County.
	25 feet downstream from Southern Railway	None	+622	
Guntersville Lake	8810 feet upstream from Goosepond Drive	None	+598	City of Scottsboro.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
	4900 feet downstream from Goosepond Drive	None	+598	
Little Paint Creek	80 feet downstream from County Route 108	+590	+589	Unincorporated Areas of Jackson County.
	50 feet upstream from County Route 108	None	+591	
Tennessee River	1300 feet downstream from Railroad	None	+612	City of Bridgeport.
	6020 feet downstream from Railroad	None	+612	
Town Creek	4310 feet upstream from County Route 33	None	+605	Unincorporated Areas of Jackson County.
	4320 feet upstream from County Route 33	None	+605	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bridgeport
Maps are available for inspection at 116 Jim Thomas Avenue, Bridgeport, AL 35740.

City of Scottsboro
Maps are available for inspection at 916 S. Broad Street, Scottsboro, AL 35768.

City of Stevenson
Maps are available for inspection at 104 Kentucky Avenue, Stevenson, AL 35772.

Unincorporated Areas of Jackson County
Maps are available for inspection at 102 E. Laurel Street, Suite 47, Scottsboro, AL 35768.

Tulsa County, Oklahoma, and Incorporated Areas

Anderson Creek	Approximately 480 ft upstream of confluence with Fisher Creek.	+659	+656	City of Sand Springs, Unincorporated Areas of Tulsa County.
	Approximately 2480 Feet upstream of confluence with Anderson Creek Tributary.	+744	+746	
Tributary	Confluence with Anderson Creek	+738	+737	City of Sand Springs, Unincorporated Areas of Tulsa County.
	Approximately 1780 ft upstream of S 153rd Ave W	None	+787	
Tributary A–1	Confluence with Anderson Creek Tributary	None	+773	Unincorporated Areas of Tulsa County.
	Approximately 1285 ft upstream of confluence with Anderson Creek Tributary.	None	+785	
Arkansas River	Approximately 7000 ft downstream of S 185th Ave E and E 161st St intersection (Wagoner County line).	+581	+582	Unincorporated Areas of Tulsa County, City of Jenks, City of Sand Springs, City of Tulsa, Town of Bixby.
	Keystone Dam	+665	+666	
Ator Tributary	Confluence with Bird Creek	None	+600	City of Owasso.
	Intersection with E 4th St.	+600	+603	
Berryhill Creek	Confluence with Arkansas River	+641	+642	City of Sand Springs, Unincorporated Areas of Tulsa County.
	Approximately 5995 ft upstream of S 65th Ave W	+709	+714	
Tributary	Confluence with Berryhill Creek	+665	+666	Unincorporated Areas of Tulsa County.
	Approximately 180 ft upstream of W 41st St	+701	+704	
Bigheart Creek	Confluence with Arkansas River	+643	+644	Unincorporated Areas of Tulsa County.
	Approximately 2000 ft upstream of W Cameron St	+675	+674	
Bird Creek Tributary 5A	Confluence with Bird Creek	+590	+591	City of Owasso.
	Approximately 3300 ft upstream of N 123rd Ave E	+654	+653	
Blackjack Creek	Confluence with Horsepen Creek	+601	+603	City of Owasso.
	Approximately 400 ft upstream of E 116th St N	None	+682	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary A	Confluence with Blackjack Creek	+614	+613	City of Collinsville, Unincorporated Areas of Tulsa County.
	Intersection with 19th St.	+645	+644	
Charley Creek	Confluence with Bird Creek	+616	+617	Unincorporated Areas of Tulsa County.
	Approximately 1020 ft upstream of N Yale Ave	None	+638	
Cherokee School Creek	Confluence with Bird Creek	None	+606	Unincorporated Areas of Tulsa County.
	Approximately 2900 ft upstream of E 66th St N	None	+616	
Cherry Creek (North Tulsa)	Confluence with Horsepen Creek	+609	+610	Unincorporated Areas of Tulsa County.
	Approximately 330 ft upstream of E 126th St N	None	+681	
Cherry Creek (West Tulsa)	Confluence with Arkansas River	+625	+624	Unincorporated Areas of Tulsa County, City of Tulsa.
	Approximately 2200 ft upstream of W 21st St	None	+643	
Tributary	Confluence with Cherry Creek (North Tulsa)	None	+661	Unincorporated Areas of Tulsa County.
	Approximately 5800 ft upstream of E 136th St N	None	+687	
Coal Creek (West Tulsa)	Confluence with Polecat Creek	+625	+624	City of Jenks, Unincorporated Areas of Tulsa County.
	Approximately 4145 feet upstream of W 151st St. intersection.	+711	+712	
Tributary A	Confluence with Coal Creek	+644	+646	City of Glenpool.
	Approximately 360 ft downstream of S Elwood Ave	None	+673	
Tributary B	Confluence with Coal Creek (West Tulsa)	+644	+645	City of Glenpool, Unincorporated Areas of Tulsa County.
	Intersection with E 131st Street	+697	+698	
Country Estates Creek	Confluence with Blackjack Creek	+637	+643	Unincorporated Areas of Tulsa County.
	Approximately 700 ft downstream of E 121st St N	None	+666	
Duck Creek	Confluence with Snake Creek	+608	+606	Unincorporated Areas of Tulsa County.
	Approximately 9100 ft upstream of U.S. 75	+683	+684	
Tributary	Confluence with Duck Creek	+661	+662	Unincorporated Areas of Tulsa County.
	Approximately 10,000 ft upstream of U.S. 75	+685	+686	
East Creek	Approximately 2780 ft downstream of E 146 St N	+601	+600	Unincorporated Areas of Tulsa County.
	Approximately 50 ft downstream of E 126th St N	+665	+664	
Euchee Creek Tributary 1	Confluence with Euchee Creek	None	+688	City of Sand Springs.
	Approximately 170 ft upstream of confluence with Euchee Creek.	None	+691	
Tributary 2	Confluence with Euchee Creek	None	+689	Unincorporated Areas of Tulsa County.
	Approximately 2000 ft upstream of confluence with Euchee Creek.	None	+690	
Fisher Creek	Confluence with Arkansas River	+649	+650	Unincorporated Areas of Tulsa County.
	Approximately 4100 ft upstream of W 41st St	None	+795	
Fisher Creek Overflow	Confluence with Arkansas River	None	+651	City of Sand Springs, Unincorporated Areas of Tulsa County.
	Approximately 2600 ft upstream of S 145th Ave W	None	+656	
Fisher Creek Tributary	Confluence with Fisher Creek	None	+701	Unincorporated Areas of Tulsa County.
	Approximately 1200 ft upstream of S 157th Ave W	None	+775	
Fox Meadow Tributary	Confluence with Blackjack Creek	None	+657	Unincorporated Areas of Tulsa County.
	Approximately 1400 ft upstream of E 120th St N	None	+676	
Franklin Creek (Formerly Arkansas River Tributary at Sand Springs.	Confluence with Arkansas River	+650	+651	City of Sand Springs, Unincorporated Areas of Tulsa County.
	Approximately 5,770 ft upstream of intersection with W 12th St.	None	+750	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Fred Creek	Confluence with Arkansas River	+618	+615	City of Tulsa.
	617 ft upstream of E 71st St.	+706	+705	
Fry Ditch No. 1 Tributary	Confluence with Fry Ditch No. 1	None	+606	Town of Bixby.
	Approximately 620 ft upstream of E 119th St	None	+616	
Fry Ditch No. 2	Confluence with Arkansas River	+604	+605	Town of Bixby.
	Approximately 522 ft upstream of E 86th St	+726	+727	
Fry Ditch No. 2 Tributary	Confluence with Fry Ditch No. 2	None	+622	Town of Bixby.
	Approximately 60 ft downstream of E Greens Ave	None	+632	
Hager Creek	Confluence with Polecat Creek	+625	+623	City of Jenks.
	Approximately 85 feet downstream of S Elwood intersection.	+628	+629	
Harlow Creek Overflow	Approximately 240 ft upstream of S 41st Ave W	None	+640	Unincorporated Areas of Tulsa County, City of Tulsa.
	Approximately 1970 ft upstream of S 57th Ave W	None	+644	
Horsepen Creek	Approximately 3970 feet downstream of 137th St. (county line).	+600	+601	City of Collinsville.
	Approximately 2400 feet upstream of N Sheridan Rd	None	+661	
North Tributary 1	Confluence with Horsepen Creek	None	+625	Unincorporated Areas of Tulsa County.
	Approximately 1600 ft upstream of N Memorial Dr	None	+642	
North Tributary 2	Confluence with Horsepen Creek	None	+634	Unincorporated Areas of Tulsa County.
	Approximately 7100 ft upstream of E 166th St N	None	+678	
North Tributary 3	Confluence with Horsepen Creek	None	+637	Unincorporated Areas of Tulsa County.
	Approximately 4300 ft downstream of N Highway 75	None	+657	
Horsepen Creek Tributary B	Confluence with Horsepen Creek	None	+642	Unincorporated Areas of Tulsa County.
	Approximately 370 ft upstream of confluence with Horsepen Creek Tributary B.	None	+644	
	Confluence with Horsepen Creek Tributary B	None	+643	Unincorporated Areas of Tulsa County.
	Approximately 2800 ft upstream of confluence witih Horsepen Creek Tributary B.	None	+650	
Tributary C	Confluence with Horcepen Creek	None	+646	City of Collinsville, Unincorporated Areas of Tulsa County.
	Approximately 750 ft upstream of E State Highway 20	None	+653	
Horsepin Creek	Confluence with South Fork Horse Creek	+633	+634	Town of Skiatook.
	Approximately 3100 ft upstream of E Cherokee St	+638	+637	
Joe Creek	Confluence with Arkansas River	+619	+616	City of Tulsa.
	Confluence with East and West Branches of Joe Creek.	+662	+660	
Little Sand Creek	Confluence with Arkansas River	+662	+663	Unincorporated Areas of Tulsa County.
	Approximately 4680 ft upstream of W 8th St	+749	+751	
Lower Fred Creek	Confluence with Arkansas River	+616	+614	City of Tulsa.
	Approximately 324 ft upstream of E 86th St	+621	+618	
Mooser Creek	Confluence with Arkansas River	+625	+624	City of Tulsa.
	Approximately 314 ft downstream of W 57th St	+714	+713	
Neckel Creek	Confluence with Polecat Creek	+629	+630	City of Tulsa.
	Approximately 950 ft upstream of W 91st St	+635	+636	
Nichols Creek	Confluence with Coal Creek (West Tulsa)	+684	+681	City of Glenpool.
	2,180 Feet downstream from W 141st Street (County Boundary).	+756	+755	
Panther Creek	Confluence with Charley Creek	+621	+624	Unincorporated Areas of Tulsa County.
	Approximately 2100 ft upstream of N Yale Ave	None	+639	
Polecat Creek	Confluence with Arkansas River	+612	+610	City of Jenks, Unincorporated Areas of Tulsa County.
	Intersection with S 33rd Ave	+633	+634	
Posey Creek	Confluence with Arkansas River	+605	+606	City of Glenpool.
	Approximately 52 feet upstream of E 151st Street	+702	+703	
North Tributary 1	Confluence with Posey Creek	+629	+630	Unincorporated Areas of Tulsa County.
	Approximately 130 ft downstream of S 7th St	+711	+712	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
South Tributary 1	Confluence with Posey Creek	+612	+610	Unincorporated Areas of Tulsa County, Town of Bixby.
	Approximately 2700 ft upstream of E 151st St	None	+668	
South Tributary 2	Confluence with Posey Creek	None	+624	Unincorporated Areas of Tulsa County, Town of Bixby.
	Approximately 540 ft upstream of S Harvard Ave	None	+662	
Prattville Creek	Confluence with Arkansas River	+650	+649	City of Sand Springs.
	Approximately 930 Ft upstream of S 112th Ave W	None	+739	
Tributary 1	Confluence with Prattville Creek	None	+667	City of Sand Springs.
	Approximately 780 ft upstream of confluence with Prattville Creek.	None	+671	
Tributary 2	Confluence with Prattville Creek	None	+693	City of Tulsa.
	Approximately 260 ft downstream of S Whispering Creek Dr.	None	+701	
Tributary 3	Confluence with Prattville Creek	None	+712	City of Sand Springs.
	Approximately 1350 ft downstream of S Linwood Dr	None	+725	
Tributary 4	Confluence with Prattville Creek	None	+728	City of Sand Springs.
	Approximately 260 ft upstream of confluence with Prattville Creek.	None	+730	
Ranch Creek	Confluence with Bird Creek	+591	+592	Unincorporated Areas of Tulsa County.
	Approximately 1070 ft upstream of E 116th St N	None	+659	
Ranch Creek Tributary	Confluence with Ranch Creek	+591	+592	Unincorporated Areas of Tulsa County.
	Approximately 1100 ft upstream of N Sheridan Rd	None	+669	
Tributary A	Confluence with Ranch Creek	+591	+592	City of Owasso.
	Intersection with N Garnett Rd	+677	+674	
Tributary B	Confluence with Ranch Creek	+607	+608	City of Owasso, Unincorporated Areas of Tulsa County.
	Approximately 50 ft downstream of E 106th St	+649	+650	
Redfork Creek	Conflucence with Arkansas River	+646	+647	City of Sand Springs, Unincorporated Areas of Tulsa County.
	Approximately 1680 ft upstream of E 41st St	+646	+647	
Tributary 1	Confluence with Redfork Creek	None	+696	City of Sand Springs.
	Approximately 1500 ft upstream of confluence with Redfork Creek.	None	+722	
Tributary 2	Confluence with Redfork Creek	None	+715	City of Sand Springs.
	Approximately 775 ft upstream of confluence with Redfork Creek.	None	+744	
Remington Tributary	Confluence with Blackjack Creek	None	+650	Unincorporated Areas of Tulsa County.
	Approximately 250 ft upstream of E 122nd St N	None	+653	
Rolling Meadows Creek	Confluence with Coal Creek (West Tulsa)	+694	+691	City of Glenpool, Unincorporated Areas of Tulsa County.
	Approximately 1480 ft. upstream of S 26th Ave. W. Intersection.	+738	+740	
Sand Creek	Confluence with Arkansas River	+660	+659	City of Sand Springs.
	Intersection with Archer St	+723	+722	
Sand Springs Lake Tributary	Confluence with West Bigheart Creek	+663	+661	City of Sand Springs.
	Approximately 1,460 ft upstream of Old North RD E	None	+773	
Sawgrass Tributary	Confluence with Ranch Creek Tributary B	None	+647	City of Owasso.
	Approximately 850 ft upstream of confluence with Ranch Creek Tributary B.	None	+654	
Shady Grove Creek	Confluence with Harlow Creek	+659	+658	Unincorporated Areas of Tulsa County.
	Approximately 3235 ft upstream of U.S. 64	+665	+664	
Skunk Creek	Confluence with Bird Creek	None	+636	Unincorporated Areas of Tulsa County.
	Approximately 1450 ft upstream of N Lewis Ave	None	+667	
Snake Creek	Confluence with Arkansas River	+597	+598	Unincorporated Areas of Tulsa County.
	Approximately 10,900 ft upstream of 201st St	+614	+613	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Snake Creek Tributary	Confluence with Snake Creek	+597	+598	Unincorporated Areas of Tulsa County.
	Approximately 1381 ft upstream of E 181st St	+604	+603	
Three Lakes Tributary	Confluence with Bird Creek Tributary 5A	None	+603	City of Owasso.
	Approximately 320 ft downstream of E 83rd St. N	None	+604	
Vensel Creek	Confluence with Arkansas River	+611	+610	City of Tulsa.
	Approximately 49 ft downstream of E 82nd St	+691	+690	
Vensel Creek South	Confluence with Arkansas River	+611	+610	City of Tulsa.
	Approximately 39 ft downstream of E 101st St	+617	+616	
West Bigheart Creek	Confluence with Bigheart Creek	+649	+650	City of Sand Springs.
	Approximately 2300 ft upstream of E Old North Rd	+720	+721	
White Church Creek	Confluence with Haikey Creek	+607	+605	Unincorporated Areas of Tulsa County.
	Approximately 218 ft upstream of E 111th St	+679	+680	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Collinsville
Maps are available for inspection at 106 N. 12th St., Collinsville, OK 74021.

City of Glenpool
Maps are available for inspection at 14522 Broadway, Glenpool, OK 74033.

City of Jenks
Maps are available for inspection at 2111 N. Elm St., Jenks, OK 74037.

City of Owasso
Maps are available for inspection at 207 South Cedar St., Owasso, OK 74055.

City of Sand Springs
Maps are available for inspection at 216 North Lincoln, Sand Springs, OK 74063.

City of Tulsa
Maps are available for inspection at 2317 South Jackson, ste. 302, Tulsa, OK 74103.

Town of Bixby
Maps are available for inspection at 116 West Needles St., Bixby, OK 74008.

Town of Skiatook
Maps are available for inspection at 100 North Broadway, Skiatook, OK 74070.

Unincorporated Areas of Tulsa County
Maps are available for inspection at 633 W. 3rd. Ste 140, Tulsa, OK 74127.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 29, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21595 Filed 11–1–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7746]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance

premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 31, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7746, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Montezuma County, Colorado, and Incorporated Areas				
Carpenter Wash	Downstream Study Limit—Cortez Corporate Boundary/North Broadway.	None	+6034	City of Cortez.
	Upstream Study Limit—500 Feet Upstream (Southwest) of Empire Street.	None	+6162	
Denny Lake	Downstream Study Limit—Cortez Corporate Boundary/Hawkins Street.	None	+6120	City of Cortez.
	Upstream Study Limit—Empire Street	None	+6134	
Dolores River	Downstream Study Limit—2nd Street/Dolores Corporate Boundary.	None	+6932	Town of Dolores, Unincorporated Areas of Montezema County.
	Upstream Study Limit—Breanna Lane/Dolores Corporate Boundary.	None	+6962	
	Downstream Study Limit—Confluence With Lost Canyon Creek.	None	+6930	Unincorporated Areas of Montezuma County, Town of Dolores.
	Upstream Study Limit—Montezuma/Dolores County Line.	None	+8446	
Glade Draw	Downstream Study Limit—1600 Feet Upstream (North) of McElmo Creek.	None	+5970	City of Cortez.
	Upstream Study Limit—200 Feet Upstream (North) of 7th Street.	None	+6139	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Industrial Wash	Downstream Study Limit—Confluence With Carpenter Wash.	None	+6046	City of Cortez.
	Upstream Study Limit—Cortez Corporate Boundary	None	+6055	
Lower Cornett Draw	Downstream Study Limit—Confluence With Carpenter Wash.	None	+6074	City of Cortez.
	Upstream Study Limit—Cortez Corporate Boundary	None	+6117	
Mancos River—Lower Reach	Downstream Study Limit—Confluence with Chicken Creek.	None	+6816	Unincorporated Areas of Montezuma County, Town of Mancos.
	Upstream Study Limit—7200 Feet Upstream of Confluence With Chicken Creek/FEMA Cross Section N.	None	+6920	
Mancos River—Upper Reach	Downstream Study Limit—200 Feet Upstream of Business 160 and Montezuma Street.	None	+7054	Unincorporated Areas of Montezuma County, Town of Mancos.
	Upstream Study Limit—700 Feet Upstream of Highway 160.	None	+7116	
South Central	Downstream Study Limit—700 Feet Upstream (North) of McElmo Creek.	None	+6021	City of Cortez.
	Upstream Study Limit—200 Feet Downstream (South) of 4th Street.	None	+6143	
Walmart Tributary	Downstream Study Limit—1200 Feet Upstream (Northeast) of McElmo Creek.	None	+6068	City of Cortez, Unincorporated Areas of Montezema County.
	Upstream Study Limit—100 Feet Downstream (South) of Main Street.	None	+6140	
West Dolores River	Downstream Study Limit—Confluence with Dolores River..	None	+7366	Unincorporated Areas of Montezema County
	Upstream Study Limit—Montezuma/Dolores County Line.	None	+7546	
West South Central	Downstream Study Limit—Confluence with South Central.	None	+6046	City of Cortez, Unincorporated Areas of Montezema County.
	Upstream Study Limit—7th Street	None	+6134	

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ADDRESSES

City of Cortez
Maps are available for inspection at City Hall, 210 E. Main Street, Cortez, CO 81321.

Town of Dolores
Maps are available for inspection at Town Hall, 420 Central Avenue, Dolores, CO 81321.

Town of Mancos
Maps are available for inspection at Town Hall, 117 North Main Street, Mancos, CO 81328.

Unincorporated Areas of Montezuma County
Maps are available for inspection at County Courthouse, 109 West Main Street, Cortez, CO 81321.

Middlesex County, Connecticut, and Incorporated Areas

Carr Brook	From confluence with Connecticut River	+24	+25	Town of Portland.
	To approximately 1,130 feet upstream from Strickland Road.	+24	+25	
Tributary A	From confluence with Carr Brook	+24	+25	Town of Portland.
	To approximately 0.45 mile upstream of Bartlett Street.	+24	+25	
Chestnut Brook	From mouth at Mattabesset River	+22	+23	Town of Cromwell.
	To approximately 40 feet upstream of Route 9	+22	+23	
Coginchaug River	At confluence with Mattabesset River	+22	+23	City of Middletown.
	Approximately 450 feet upstream of State Route 66 (Washington Street).	+22	+23	
Coles Road Brook	From mouth at Mattabesset River	+22	+23	Town of Cromwell.
	To approximately 26 feet downstream of Route 372	+22	+23	

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Connecticut River	Approximately 1.17 miles downstream of confluence of Clark Creek.	+10	+11	Town of Cromwell, City of Middletown, Town of East Haddam, Town of East Hampton, Town of Haddam, Town of Portland.
	Approximately 0.59 mile upstream of confluence of Hales Brook.	+24	+25	
Cromwell Creek	From confluence with Connecticut River	+22	+24	Town of Cromwell.
	To approximately 1,300 feet upstream of South Street	+23	+24	
East Swamp Brook	At confluence with Swamp Brook	+22	+23	City of Middletown.
	Approximately 350 feet upstream of Tiger Lane	+22	+23	
Hales Brook	From confluence with Connecticut River	+24	+25	Town of Portland.
	To approximately 0.76 mile upstream of confluence	+24	+25	
Mattabesset River	At confluence with Connecticut River	+22	+23	City of Middletown, Town of Cromwell.
	Approximately 500 feet downstream of Berlin Road	+22	+23	
Mill Creek	At confluence with Connecticut River	+13	+15	Town of Haddam.
	Approximately 1,200 feet upstream of Route 9A	+14	+15	
Miner Brook	At confluence with Mattabesset River	+22	+23	City of Middletown.
Moodus River	At confluence with Salmon River	+11	+14	Town of East Haddam.
	At downstream side of Johnsonville Road	+11	+14	
Ponset Brook	At confluence with Connecticut River	+16	+17	Town of Haddam.
	Approximately 0.40 mile upstream of confluence with Connecticut River.	+16	+17	
Reservoir Brook	From confluence with Connecticut River	+24	+25	Town of Portland.
	To approximately 25 feet downstream of Route 17	+24	+25	
Salmon River	At confluence with Connecticut River	+11	+14	Town of Haddam, Town of East Haddam.
	At downstream side of Leesville Dam	+11	+14	
Sawmill Brook	At confluence with Mattabesset River	+22	+23	City of Middletown.
	Approximately 1,270 feet upstream of confluence with Mattabesset River.	+22	+23	
Shunpike Creek	Mouth at Mattabesset River	+22	+23	Town of Cromwell.
	To approximately 0.26 mile upstream of mouth at Mattabesset River.	+22	+23	
Succor Brook	At confluence with Connecticut River	+10	+12	Town of East Haddam.
	Approximately 125 feet upstream of Lumber Yard Road.	+11	+12	
Sumner Brook	At confluence with Connecticut River	+22	+23	City of Middletown.
	At upstream side of State Routes 9 and 17 culvert	+22	+23	
Swamp Brook	At confluence with Mattabesset River	+22	+23	City of Middletown.
	At confluence of East Swamp and West Swamp Brooks.	+22	+23	
West Swamp Brook	At upstream side of Kaplan Drive	+22	+23	City of Middletown.
	At confluence with Swamp Brook	+22	+23	
Willow Brook	From mouth at Mattabesset River	+22	+23	Town of Cromwell.
	To East View Drive	+22	+23	

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ADDRESSES

City of Middletown
Maps are available for inspection at City of Middletown Planner's Office, 245 deKoven Drive, Middletown, CT.

Town of Cromwell
Maps are available for inspection at Town of Cromwell Planner's Office, 41 West Street, Cromwell, CT.

Town of East Haddam
Maps are available for inspection at Town of East Haddam Planner's Office, 7 Main Street, East Haddam, CT.

Town of East Hampton
Maps are available for inspection at Town of East Hampton Planning Administrator's Office, 20 East High Street, East Hampton, CT.

Town of Haddam
Maps are available for inspection at Town of Haddam Engineer's Office, 30 Field Park Drive, Haddam, CT.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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Town of Portland				
Maps are available for inspection at Town of Portland Planner's Office, 33 East Main Street, Portland, CT.				
Gadsden County, Florida, and Incorporated Areas				
Holley Branch	Approximately 2,500 feet upstream of the confluence with Ochlockonee River.	None	+86	Unincorporated Areas of Gadsden County, City of Midway.
	Approximately 4,300 feet upstream of Dupont Road	None	+123	
Holley Branch Unnamed Tributary.	At the confluence with Holley Branch	None	+91	Unincorporated Areas of Gadsden County, City of Midway.
	Approximately 4,400 feet upstream of the confluence with Holley Branch.	None	+101	
Lake Talquin (Unnamed Tributary).	Approximately 1,100 feet upstream of the confluence with Lake Talquin.	None	+75	Unincorporated Areas of Gadsden County.
	Approximately 1.8 miles upstream of the confluence with Lake Talquin.	None	+120	
Monroe Creek	Approximately 1,400 feet upstream of the confluence with Little River.	None	+86	Unincorporated Areas of Gadsden County, City of Midway.
	Approximately 800 feet upstream of U.S. Highway 90	None	+139	
Mosquito Creek Unnamed Tributary.	Just upstream of Martin Luther King Jr. Boulevard	None	+77	City of Chattahoochee.
	Just downstream of East River Road	None	+103	
Ochlockonee River Unnamed Tributary.	Approximately 4,200 feet upstream of the confluence with Ochlockonee River.	None	+100	Unincorporated Areas of Gadsden County.
	Approximately 1.6 miles upstream of the confluence of Unnamed Tributary to Ochlockonee River Unnamed Tributary.	None	+156	
South Mosquito Creek	Approximately 1,670 feet upstream of the confluence with Mosquito Creek (just upstream of the Gadsden County/City of Chattahoochee corporate limit).	None	+81	Unincorporated Areas of Gadsden County.
	Approximately 2,400 feet upstream of the confluence with South Mosquito Creek Unnamed Tributary.	None	+81	
South Mosquito Creek Unnamed Tributary.	Approximately 200 feet upstream of the confluence with South Mosquito Creek.	None	+81	Unincorporated Areas of Gadsden County, City of Chattahoochee.
	Approximately 4,100 feet upstream of Depot Road	None	+118	
Tanyard Branch	Approximately 1,200 feet upstream of the confluence with Quincy Creek.	None	+118	Unincorporated Areas of Gadsden County, City of Quincy.
	Approximately 180 feet upstream of Seventh Street	None	+182	
Unnamed Tributary 1	At the confluence with Tanyard Branch	None	+130	City of Quincy.
	Approximately 150 feet upstream of Circle Drive	None	+162	
Unnamed Tributary 2	At the confluence with Tanyard Branch	None	+131	Unincorporated Areas of Gadsden County, City of Quincy.
	Approximately 4,500 feet upstream of the confluence with Tanyard Branch.	None	+146	
Unnamed Tributary to Ochlockonee River Unnamed Tributary.	At the confluence with Ochlockonee River Unnamed Tributary.	None	+130	Unincorporated Areas of Gadsden County, Town of Havana.
	Approximately 2,350 feet upstream of State Highway 12.	None	+152	

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ADDRESSES

City of Chattahoochee

Maps are available for inspection at Chattahoochee City Hall, 22 Jefferson Street, Chattahoochee, FL.

City of Midway

Maps are available for inspection at Midway City Hall, 50 Martin Luther King Boulevard, Midway, FL.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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City of Quincy
Maps are available for inspection at Quincy City Hall, 404 West Jefferson Street, Quincy, FL.

Town of Havana
Maps are available for inspection at Havana Town Hall, 711 North Main Street, Havana, FL.

Unincorporated Areas of Gadsden County
Maps are available for inspection at Gadsden County Administration Building, 5B East Jefferson Street, Quincy, FL.

Hillsborough County, Florida, and Incorporated Areas

Backwater from Cypress Creek.	Approximately 900 feet southwest of the intersection of Clubhouse Drive and Kings Boulevard.	None	+30	Unincorporated Areas of Hillsborough County.
Ponding Area	Approximately 400 feet northwest of the intersection of Ojai Avenue and Hacienda Drive.	None	+53.8	Unincorporated Areas of Hillsborough County.
	Approximately 400 feet northwest of the intersection of Kings Green Drive and Vilmont Greens Drive.	None	+19.1	Unincorporated Areas of Hillsborough County.
	Approximately 200 feet east of the intersection of 36th Street and Myrtle Tree Lane.	None	+29.1	Unincorporated Areas of Hillsborough County.
	Approximately 100 feet east of the intersection of Vilmont Greens Drive and Kensington Greens Drive.	None	+29.9	Unincorporated Areas of Hillsborough County.
	Approximately 370 feet northeast of the intersection of Radison Avenue and Radison Lake Court.	None	+35.6	Unincorporated Areas of Hillsborough County.
	Approximately 500 feet northeast of the intersection of Kings Boulevard and McDaniel Street.	None	+35.6	Unincorporated Areas of Hillsborough County.
	Approximately 400 feet southeast of the intersection of Olive Branch Drive and Oxford Park Drive.	None	+36.5	Unincorporated Areas of Hillsborough County.
	Approximately 500 feet southeast of the intersection of Vista Greens Drive and New Point Loop.	None	+37.8	Unincorporated Areas of Hillsborough County.
	Approximately 1,600 feet east of the intersection of Vista Greens Drive and New Point Loop.	None	+33	Unincorporated Areas of Hillsborough County.
	Approximately 600 feet southwest of the intersection of Chipper Drive and Pebble Beach Boulevard.	None	+59.1	Unincorporated Areas of Hillsborough County.
	Approximately 600 feet southwest of the intersection of Council Drive and Pebble Beach Boulevard.	None	+51.4	Unincorporated Areas of Hillsborough County.
	Approximately 300 feet southwest of the intersection of Foxhunt Drive and Finsbury Circle.	None	+34	Unincorporated Areas of Hillsborough County.
	Approximately 300 feet southwest of the intersection of Foxhunt Drive and Foxglove Circle.	None	+31	Unincorporated Areas of Hillsborough County.
	Approximately 800 feet southeast of the intersection of Nebraska Avenue and 139th Avenue.	None	+44.7	Unincorporated Areas of Hillsborough County.
	Approximately 1,300 feet southeast of the intersection of Nebraska Avenue and 139th Avenue.	None	+39.3	Unincorporated Areas of Hillsborough County.
	Approximately 300 feet northeast of the intersection of Lucerne Drive and 143rd Avenue.	None	+43.4	Unincorporated Areas of Hillsborough County.
	Approximately 200 feet northeast of the intersection of Skipper Road and 16th Street.	None	+43.8	Unincorporated Areas of Hillsborough County.
	Approximately 800 feet northwest of the intersection of Ojai Avenue and El Rancho Drive.	None	+52.7	Unincorporated Areas of Hillsborough County.
	Approximately 500 feet southeast of the intersection of Emerald Lake Drive and Del Webb Boulevard.	None	+42.7	Unincorporated Areas of Hillsborough County.
	Approximately 400 feet south of the intersection of Foxhunt Drive and Finsbury Circle.	None	+37	Unincorporated Areas of Hillsborough County.

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ADDRESS

Unincorporated Areas of Hillsborough County
Maps are available for inspection at Hillsborough County Department of Planning and Growth Management, 5701 East Hillsborough Avenue, Suite 1140, Tampa, FL.

Leon County, Florida, and Incorporated Areas

Northeast Drainage Ditch Tributary 1.	Approximately 200 feet upstream of the confluence of Northeast Drainage Ditch.	+90	+91	City of Tallahassee.

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	Just downstream of Lonnbladh Road	+90	+95	

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ADDRESS

City of Tallahassee

Maps are available for inspection at Tallahassee City Hall, 300 South Adams Street, Tallahassee, FL.

Taylor County, Florida, and Incorporated Areas

Aucilla River	At U.S. Highway 98	None	+10	Unincorporated Areas of Taylor County.
	At the Taylor/Madison County boundary	None	+45	
Pimple Creek.	At the confluence with Spring Creek	+36	+37	City of Perry.
	Approximately 400 feet downstream of Cherry Street	+42	+41	
Pimple Creek East Branch ...	Just upstream of Johnson Stripling Road	+43	+44	City of Perry.
	Approximately 1,000 feet upstream of Johnson Stripling Road.	+43	+44	
Rocky Creek	At the confluence with Spring Street	None	+26	Unincorporated Areas of Taylor County.
	Approximately 1,300 feet upstream of U.S. Highway 221.	None	+56	

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ADDRESSES

City of Perry

Maps are available for inspection at Perry City Hall, 224 South Jefferson Street, Perry, FL.

Unincorporated Areas of Taylor County

Maps are available for inspection at Taylor County Building/Planning Department, 201 East Green Street, Perry, FL.

Union County, Florida, and Incorporated Areas

Santa Fe River Unnamed Tributary.	Approximately 2,000 feet upstream of the confluence with the Santa Fe River.	None	+73	Town of Worthington Springs, Unincorporated Areas of Union County.
	Approximately 1,940 feet upstream of Southwest 43rd Trail.	None	+113	

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ADDRESSES

Town of Worthington Springs

Maps are available for inspection at Worthington Springs City Hall, State Road 121 3rd Avenue, Worthington Springs, FL.

Unincorporated Areas of Union County

Maps are available for inspection at Union County Office of Emergency Management, 58 Northwest 1st Street, Lake Butler, FL.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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Haralson County, Georgia, and Incorporated Areas				
Cochran Creek	Approximately 950 feet downstream from Dallas Road	None	+1157	Unincorporated Areas of Haralson County, City of Buchanan.
	Approximately 750 feet upstream from Moore Street	None	+1199	

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ADDRESSES

City of Buchanan

Maps are available for inspection at 4300 Highway 120, Buchanan, GA 30113.

Unincorporated Areas of Haralson County

Maps are available for inspection at 155 Van Wert Street, Buchanan, GA 30113.

Bourbon County, Kansas, and Incorporated Areas				
Marmaton River	At the confluence of Mill Creek	+800	+801	Unincorporated Areas of Bourbon County.
	Approximately 500 feet upstream of Sterwarts Dam	+804	+805	

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ADDRESS

Unincorporated Areas of Bourbon County

Maps are available for inspection at 210 South National Avenue, Fort Scott, KS 66701.

Erie County, New York, and Incorporated Areas				
Buffalo River	At the confluence with Lake Erie	+580	+581	City of Buffalo.
	A point located approximately 200 feet upstream from the Railroad bridge.	+580	+581	
Cazenovia Creek	At a point approximately 175 feet upstream of Bailey Road.	+585	+584	City of Buffalo.
	At a point approximately 830 feet upstream from the Golf Course Bridge.	+598	+597	
Ellicott Creek	At a point approximately 1,070 feet upstream from the confluence of Ellicott Creek North Diversion Channel.	+573	+574	Town of Amherst, Village of Williamsville.
	A point located approximately 230 feet downstream of Interstate 90.	+684	+683	
Ellicott Creek North Diversion Channel.	At a point located approximately 1,190 feet upstream of North Ellicott Creek Road.	+573	+574	Town of Amherst.
	At the upstream confluence with Ellicott Creek	+575	+577	
Ellicott Creek Pfohl Park Diversion Channel.	At the downstream confluence with Ellicott Creek	+575	+577	Town of Amherst.
	At the upstream confluence with Ellicott Creek	+576	+577	
Lake Erie	Entire shoreline	+580	+581	City of Buffalo.
Ransom Creek	A point located approximately 5 feet upstream of Glen Oakes Drive.	+581	+582	Town of Amherst, Town of Clarence.
	A point located approximately 120 feet upstream of Knauss Road.	None	+652	
Scajaquada Creek	A point located on the upstream side of the Eastbound on-ramp to Interstate 190.	+573	+578	City of Buffalo.
	At exiting of the Scajaquada Drain	+608	+611	
Spicer Creek	A point located approximately 1,625 feet upstream of East River Road.	+570	+571	Town of Grand Island.

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	A point located approximately 3,350 feet upstream of Harvey Road.	None	+585	

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ADDRESSES

City of Buffalo
Maps are available for inspection at Buffalo City Hall, 65 Niagara Square, Buffalo, NY.

Town of Amherst
Maps are available for inspection at Amherst Town Hall, 5583 Main Street, Williamsville, NY.

Town of Clarence
Maps are available for inspection at Clarence Town Engineer's Office, 6221 Goodridge, Clarence, NY.

Town of Grand Island
Maps are available for inspection at Grand Island Town Hall, 2255 Baseline Road, Grand Island, NY.

Village of Williamsville
Maps are available for inspection at Williamsville Village Hall, 5565 Main Street, Williamsville, NY.

Avery County, North Carolina, and Incorporated Areas

Elk River	At the North Carolina/Tennessee state boundary	None	+2693	Unincorporated Areas of Avery County, Town of Banner Elk.
	Approximately 0.5 mile downstream of Glove Factory Lane.	+3672	+3673	
Tributary 1	At the North Carolina/Tennessee state boundary	None	+2772	Unincorporated Areas of Avery County.
	Approximately 0.7 mile upstream of North Carolina/Tennessee state boundary.	None	+3198	

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ADDRESSES

Town of Banner Elk
Maps are available for inspection at Banner Elk Town Hall, 200 Park Avenue, Banner Elk, NC

Unincorporated Areas of Avery County
Maps are available for inspection at Avery County Courthouse, 200 Montezuma Street, Newland, NC.

Providence County, Rhode Island, and Incorporated Areas

Blackstone River	Just downstream of Exchange Street	+33	+34	City of Central Falls, City of Pawtucket, City of Woonsocket, Town of Cumberland, Town of Lincoln, Town of North Smithfield.
	Approximately 2,100 feet upstream of the confluence of Slaterville River Branch.	+159	+158	

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ADDRESSES

City of Central Falls
Maps are available for inspection at City Hall, 580 Broad Street, Central Falls, RI 02863.

City of Pawtucket
Maps are available for inspection at City Hall, 137 Roosevelt Avenue, Pawtucket, RI 02860.

City of Woonsocket
Maps are available for inspection at City Hall, 169 Main Street, Woonsocket, RI 02895.

Town of Cumberland
Maps are available for inspection at Town Hall, 45 Broad Street, Cumberland, RI 02864.

Town of Lincoln
Maps are available for inspection at Town Hall, 100 Old River Road, Lincoln, RI 02865.

Town of North Smithfield
Maps are available for inspection at Town Hall, 575 Smithfield Road, North Smithfield, RI 02896.

Rutland County, Vermont, and Incorporated Areas

Clarendon River	Approximately 1,700 feet upstream of confluence with Otter Creek.	+488	+487	Town of Rutland.
	At the confluence with Otter Creek	+488	+487	
Curtis Brook	At the confluence with East Creek	+664	+663	Town of Rutland.
	Approximately 500 feet upstream of confluence with East Creek.	+668	+667	
East Creek	At the confluence with Otter Creek	+531	+532	City of Rutland, Town of Rutland.
	Approximately 1.07 miles upstream of East Pittsford Road.	+757	+752	
Homer Stone Brook	At the confluence with Otter Creek	+633	+630	Town of Wallingford.
	Approximately 75 feet upstream of confluence with Otter Creek.	+633	+632	
Lake St. Catherine (Little Lake).	Entire shoreline within the Town of Poultney	None	+486	Town of Poultney.
Moon Brook	At the downstream side of Granger Street	+534	+533	City of Rutland.
	Approximately 2,964 feet upstream of Sharon Drive	+691	+699	
Otter Creek	At upstream side of Center Rutland Dam	+516	+515	Town of Clarendon, City of Rutland, Town of Danby, Town of Rutland, Town of Wallingford.
	Approximately 1.09 miles upstream of confluence of Homer Stone Brook.	+643	+642	
Roaring Brook	At the confluence with Otter Creek	+569	+567	Town of Wallingford.
	Approximately 165 feet upstream of confluence with Otter Creek.	+572	+571	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Rutland
Maps are available for inspection at Rutland City Clerk's Office, 1 Strongs Avenue, Rutland, VT.

Town of Clarendon
Maps are available for inspection at Clarendon Town Hall, 279 Middle Road, North Clarendon, VT.

Town of Danby
Maps are available for inspection at Danby Town Hall, 130 Brook Road, Danby, VT.

Town of Poultney
Maps are available for inspection at Poultney Town Clerk's Office, 9 Main Street, Poultney, VT.

Town of Rutland
Maps are available for inspection at Rutland Town Clerk's Office, 181 Business Route 4, Center Rutland, VT.

Town of Wallingford
Maps are available for inspection at Wallingford Town Clerk's Office, 75 School Street, Wallingford, VT.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 30, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21610 Filed 11–1–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7743]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 31, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7743, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding Source(s)	Location on Referenced Elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities Affected
		Effective	Modified	
Hartford County, Connecticut (All Jurisdictions)				
Connecticut River ...	At confluence with Dividend Brook.	+28	+26	Town of East Hartford, Town of East Windsor, Town of Enfield, Town of Glastonbury, City of Hartford, Town of Rocky Hill, Town of South Windsor, Town of Suffield, Town of Wethersfield, Town of Windsor, Town of Windsor Locks.
	At Connecticut/Massachusetts state boundary.	+56	+57	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Town of East Hartford
Maps are available for inspection at 740 Main Street, East Hartford, CT 06108.

Town of East Windsor
Maps are available for inspection at East Windsor Town Hall, 11 Rye Street, Broad Brook, CT 06016.

Town of Enfield
Maps are available for inspection at Enfield Town Engineer's Office, 820 Enfield Street, Enfield, CT 06082.

Town of Glastonbury
Maps are available for inspection at Town Hall, 2155 Main Street, Glastonbury, CT 06033.

City of Hartford
Maps are available for inspection at Department of Public Works, 525 Main Street, Hartford, CT 06103.

Town of Rocky Hill
Maps are available for inspection at 761 Old Main Street, Rocky Hill, CT 06067.

Town of South Windsor
Maps are available for inspection at South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, CT 06074.

Town of Suffield
Maps are available for inspection at Town Clerk's Office, 83 Mountain Road, Suffield, CT 06078.

Town of Wethersfield
Maps are available for inspection at 505 Dean Silas Highway, Wethersfield, CT 06109.

Town of Windsor
Maps are available for inspection at Windsor Town Hall, 275 Broad Street, Windsor, CT 06095.

Town of Windsor Locks
Maps are available for inspection at Windsor Locks Town Hall, 50 Church Street, Windsor Locks, CT 06096.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 29, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21607 Filed 11–1–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296, FCC 07–109]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document the Commission seeks comment on several issues relating to the Emergency Alert System (EAS), in order to ensure that EAS rules better protect the life and property of all Americans. Recognizing the need of all Americans to be alerted in the event of an emergency, the Commission seeks comment on those whose primary language is not English, and persons with disabilities, to determine how these communities might best be served by EAS. The Commission also seeks comment on whether emergency alerts transmitted by local authorities should be transmitted, and various ways that performance of EAS operation may be assessed.

DATES: Written comments are due on or before December 3, 2007 and reply comments are due on or before December 17, 2007.

ADDRESSES: You may submit comments, identified by EB Docket No. 04–296, by any of the identified 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:* U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th 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: Thomas Beers, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–1170, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Further Notice of Proposed Rulemaking* (FNPRM) in EB Docket No. 04–296, FCC 07–108, adopted on May 31, 2007, and released on July 12, 2007.

Non-English Speakers

1. In the *FNPRM,* the Commission seeks comment on how non-English speakers may best be served by national, state and local EAS. In particular, we invite comment on how localities with non-English speakers should be identified. In which markets should special emergency alert rules apply? Should state and local EAS plans designate a ''Local Primary Multilingual'' station to transmit emergency information the relevant foreign language in local areas where a substantial proportion of the population has a fluency in a language other than English? How should we quantify the ''substantial proportion''? Should at least one broadcast station in every market, or some subset of markets, be required to monitor and rebroadcast emergency information carried by a ''Local Primary Multilingual'' station. And, should stations that remain on the air during an emergency be required to broadcast emergency information in the relevant foreign language to the extent that the ''Local Primary Multilingual'' station loses transmission capability. What criteria should the originator of an EAS message use in determining which languages to require EAS Participants to transmit? Should more than two languages be transmitted in certain areas? We seek comments on the technical, economic, practical, and legal issues, including the Commission's authority, involved in making emergency information accessible to persons whose primary language is not English. We would especially welcome comments on state-level or other efforts designed to address these issues. We note, for example, that Florida has implemented a program to promote the provision of emergency information to non-English speakers in that state, and that California and Texas have addressed the issue in their EAS plans filed with this Commission. We direct the Public Safety and Homeland Security Bureau to convene a meeting—or series of meetings—as soon as possible concerning EAS as it relates to the needs of non-English speakers. The Bureau should thereafter submit into the record a progress report on these discussions within 30 days of the Order's release.

Persons with Disabilities

2. In the *FNPRM* we reexamine the best way to make EAS and other emergency information accessible to persons with disabilities. We request comments on this subject, including, but not necessarily limited to the following key issues: (i) Presentation of the audio feed in text format, and vice-versa; (ii) making emergency information available to various devices commonly used by persons with disabilities; and (iii) providing emergency messages in multiple formats to meet the needs of persons with disabilities. We also seek comment on the interaction between our part 11 rules and section 79.2 of our rules. We welcome comments on the technical, economic, practical, and legal issues, including the Commission's authority, involved in making emergency information accessible to persons with disabilities.

Other Local Official Alerts

3. Our action enables state governors (or their designees) to initiate state-level and geo-targeted alerts for mandatory transmission by EAS Participants. Since EAS activations to date have been overwhelmingly related to weather and state and local alerts, we seek comment on whether EAS Participants should be required to receive and transmit alerts initiated by government entities other than a state governor. Should local, county, tribal, or other state governmental entities be allowed to initiate mandatory state and local alerts? How should the Commission decide which public officials should be permitted to activate the alert? Should the expansion of mandatory state and local alerts be limited to certain types of alerts? We seek comment on whether the Commission should specify the types of emergency alerts that these local officials should be permitted to activate? Should only certain classes of EAS Participants be required to transmit such alerts by entities other than the governor? Does CAP allow for proper delivery of such alerts, or should such alerts be mandatory only in the context of Next Generation EAS? What other considerations should govern the appropriate use of a mandatory alerting process by entities other than a governor? We seek comment generally on how this type of requirement should be implemented.

Assessing EAS Operation

4. We seek comment on several options for ensuring that EAS operates as designed in an emergency, including whether we should require: (i) Additional testing of the EAS, and specifically CAP; (ii) station certification of compliance; and (iii) assessments of EAS performance after an alert has been triggered. We will revisit the issue of performance standards if it appears that they are warranted. In particular, we seek comments on the technical, economic, practical, and legal issues involved.

I. PROCEDURAL MATTERS

A. Ex-Parte Rules—Permit-but-Disclose Proceeding

5. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commision's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

B. Comment Dates

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using (1) the FCC's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See*

Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

7. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.

8. For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

9. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

10. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

11. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

12. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

13. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

14. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

C. Paperwork Reduction Act

15. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it 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).

II. INITIAL REGULATORY FLEXIBILITY ANALYSIS

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the *FNPRM.* The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

17. In the *FNPRM,* we seek comment on four areas where the EAS rules might be amended. Recognizing the need of all Americans to be alerted in the event of an emergency, the Commission invites comments first on non-English speakers and second on persons with disabilities to determine how these communities might best be served by EAS. Third, the Commission invites comment on whether emergency alerts transmitted by local authorities should be transmitted. Fourth, the Commission invites comment on various ways that the performance of EAS operations may be assessed.

Legal Basis

18. Authority for the actions proposed in this *FNPRM* may be found in sections 1, 4(i), 4(o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended, (Act) 47 U.S.C. 151, 154(i), 154(j), 154(o), 303(r), 544(g) and 606.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply

19. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. There are potential reporting or recordkeeping requirements proposed in the *FNPRM.* For example, the Commission is considering whether to adopt performance standards and reporting obligations for EAS participants. The proposals set forth in the *FNPRM* are intended to advance our public safety mission and enhance the performance of the EAS while reducing regulatory burdens wherever possible.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

22. The *FNPRM* seeks comment on how the Commission may better protect the lives and property of Americans. In commenting on this goal, commenters are invited to propose steps that the Commission may take to minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are

invited to propose significant alternatives that serve the goals of these proposals. We expect that the record will develop to demonstrate significant alternatives.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

23. None.

III. ORDERING CLAUSES

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07–5331 Filed 11–1–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 579

[Docket No. NHTSA–07–29294]

Federal Motor Vehicle Safety Standards; Small Business Impacts of Motor Vehicle Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of regulatory review; request for comments.

SUMMARY: NHTSA seeks comments on the economic impact of its regulations on small entities. As required by Section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, motorcycles, and motor vehicle equipment.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than January 2, 2008.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA–07–29294] by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: For detailed instructions on submitting comments and additional information see the Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Juanita Kavalauskas, Office of Regulatory Analysis, Office of Regulatory Analysis and Evaluation, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–366–2584, fax 202–366–3189).

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The National Highway Traffic Safety Administration (NHTSA, ''we'') has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ended in the fall of 1999; Year 2 (1999) began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with State or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review. The following table shows the 10-year analysis and review schedule:

NHTSA SECTION 610 REVIEW PLAN

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 501 through 526 and 571.213	1998	1999
2	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222	1999	2000
3	49 CFR 571.101 through 571.110 and 571.135	2000	2001
4	49 CFR parts 529 through 579, except part 571	2001	2002
5	49 CFR 571.111 through 571.129 and parts 580 through 588	2002	2003
6	49 CFR 571.201 through 571.212	2003	2004
7	49 CFR 571.214 through 571.219, except 571.217	2004	2005
8	49 CFR parts 591 through 594	2005	2006
9	49 CFR 571.223 through 571.500 and part 579	2007	2008
10	23 CFR parts 1200 and 1300 and new parts and subparts under 23 CFR	2008	2009

C. Regulations Under Analysis

During Year 9, we will conduct a preliminary assessment of the following sections of 49 CFR parts 571.223 through 571.500 and part 579.

Section	Title
571.223	Rear impact guards.
571.224	Rear impact protection.
571.225	Child restraint anchorage systems.
571.301	Fuel system integrity.
571.302	Flammability of interior materials.
571.303	Fuel system integrity of compressed natural gas vehicles.
571.304	Compressed natural gas fuel container integrity.
571.305	Electric-powered vehicles: electrolyte spillage and electrical shock protection.
571.401	Interior trunk release.
571.403	Platform lift systems for motor vehicles.
571.404	Platform lift installations in motor vehicles.
571.500	Low-speed vehicles.
Part 579	Reporting of information and communications about potential defects.

We are seeking comments on whether any requirements in 49 CFR 571.223 through 571.500 and part 579 have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of the requirements in 49 CFR 571.223 through 571.500 or part 579 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

II. Plain Language

A. Background and Purpose

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review 49 CFR 571.223 through 571.500 and part 579 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the

Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) at *http://regulations.gov.*

(2) FDMS provides two basic methods of searching to retrieve dockets and docket materials that are available in the system: (a) ''Quick Search'' to search using a full-text search engine, or (b) ''Advanced Search,'' which displays various indexed fields such as the docket name, docket identification number, phase of the action, initiating office, date of issuance, document title, document identification number, type of document, **Federal Register** reference, CFR citation, etc. Each data field in the advanced search may be searched independently or in combination with other fields, as desired. Each search yields a simultaneous display of all available information found in FDMS that is relevant to the requested subject or topic.

(3) You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Joseph Carra,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. E7–21628 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1114, 1121, 1150, and 1180

[STB Ex Parte No. 575 (Sub-No. 1)]

Disclosure of Rail Interchange Commitments

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board is requesting comments on proposed rules to require that parties seeking to exempt, or to invoke class exemptions covering, transactions involving the sale or lease of railroad lines, identify provisions in their agreements that restrict the ability of the purchaser or tenant railroad to interchange traffic with rail carriers other than the seller or landlord railroad (interchange commitments). The proposed rules also provide a procedure whereby shippers or other affected parties may obtain access to such provisions. The Board is taking this action to facilitate the case-specific review of the reasonableness of interchange commitments and to facilitate the Board's monitoring of their usage.

DATES: Opening comments may be filed by any interested member of the public by January 2, 2008. Reply comments may be filed by January 22, 2008. Since OMB is required to make a decision concerning the STB's request for approval of this information collection between 30 and 60 days after November 2, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by December 3, 2007.

ADDRESSES: Any comments submitted in this proceeding must refer to STB Ex Parte No. 575 (Sub-No. 1) and may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing must attach a document and otherwise comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format must submit an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. Because all comments will be posted to the Board's Web site, persons filing them with the Board need not serve them on other participants but must furnish a hard copy on request to any participant.

Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for STB.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information and background on the proposed regulations, including the basis for the Board's proposed regulations, appear in the decision in *Review of Rail Access and Competition Issues—Renewed Petition of the Western Coal Traffic League,* STB Ex Parte No. 575, *et al.,* which is being served on the date of publication of this notice, and is available on the Board's Web site at *http://www.stb.dot.gov.*

To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

The proposed collection of information in the proposed revisions to our regulations for exempting the sale or lease of railroad lines is being submitted to the OMB for review as required under the PRA, 44 U.S.C. 3507(d) and OMB regulations at 5 CFR 1320.11. Pursuant to the Paperwork Reduction Act (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board also seeks comments regarding the collection of information that would be required in the proposed revisions to our regulations for exempting the sale or lease of railroad lines. Specifically, the Board seeks comments on: (1) Whether the collection of information proposed here is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Information pertinent to these issues is included. Pursuant to the PRA and OMB regulations, the STB is submitting a request to OMB for approval of this information collection. Submit comments on the four questions above to both the STB and OMB.

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act.

Description of Collection

Title: Contracts to be Submitted When Rail Carriers Seek Exemption to Acquire (Through Purchase or Lease) and/or Operate a Rail Line.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Noncarriers and carriers seeking an exemption to acquire (through purchase or lease) and/or operate a rail line, if the transaction creates an interchange commitment.

Number of Respondents: 65 (potential).

Estimated Time Per Response: Less than 15 minutes.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): 16 hours.

Total "Non-hour Burden" Cost: None identified.

Needs and Uses: Under 49 U.S.C. 10502, noncarriers and carriers may seek an exemption from the prior approval requirements of sections 10901, 10902, and 11323 to acquire (through purchase or lease) and operate a rail line. The proposed collection of agreements with interchange commitments is intended to facilitate the Board's monitoring of their usage.

Retention Period: Information in this report will be maintained in the Board's confidential file for 10 years, after which it is transferred to the National Archives.

Small Entities

The Board certifies that the proposed revisions to our regulations, if adopted, will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulations will not have a significant effect on small entities because they require merely that a party seeking an exemption for the lease or sale of trackage identify the existence of any interchange commitment and give the Board a copy of the document that creates it. The provision of copies of an existing document will involve only limited additional copying expense. Moreover, the regulations will not affect a substantial number of small entities because they will only apply to small railroads that become parties to future line sales or leases that involve interchange commitments.

Board decisions, notices, filings, and hearings transcripts are also available on our Web site at *http://www.stb.dot.gov.*

List of Subjects

49 CFR Part 1114

Administrative practice and procedure.

49 CFR Parts 1121 and 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1180

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

Authority: 49 U.S.C. 721, 5 U.S.C. 553.

Decided: October 29, 2007.

By the Board, Chariman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, parts 1114, 1121, 1150, and 1180, of title 49, chapter X, of the Code of Federal Regulations are proposed to be amended as follows:

PART 1114—APPELLATE PROCEDURES

1. The authority citation for part 1114 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

2. Amend § 1114.30 by adding paragraph (d) to read as follows:

§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.

* * * * *

(d) *Agreements Containing Interchange Commitments.* In any proceeding involving the reasonableness of provisions related to a rail carrier sale or lease agreement that serve to induce a party to the agreement to interchange traffic with another party to the agreement, rather than with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means, a party to the proceeding may obtain a confidential, complete version of the agreement, with the prior approval of the Board. The party seeking such approval must file an appropriate motion containing a draft protective order and undertaking(s) that will ensure the agreement is kept confidential. The motion seeking approval may be filed at any time after the initial complaint or petition, including before the answer to the complaint or petition is due. A reply to such a motion must be filed within 10 days thereafter. The motion will be considered by the Board in an expedited manner.

PART 1121—RAIL EXEMPTION PROCEDURES

3. The authority citation for part 1121 continues to read as follows:

Authority: 49 U.S.C. 10502 and 10704.

4. Amend § 1121.3 by adding paragraph (d) to read as follows:

§ 1121.3 Content.

* * * * *

(d) *Transactions Imposing Interchange Commitments.* (1) If a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (''interchange commitment''), the following additional information must be provided:

(i) The existence of that provision or agreement and the affected interchange points must be identified; and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (d)(1) of this section by filing, and serving upon the petitioner, a ''Motion for Access to Confidential Documents,'' containing:

(i) An explanation of the party's need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

5. The authority citation for part 1150 continues to read as follows:

Authority: 49 U.S.C. 721(a), 10502, 10901, and 10902.

6. Amend § 1150.33 by adding paragraph (h) to read as follows:

§ 1150.33 Information to be contained in notice—transactions that involve creation of Class III carriers.

* * * * *

(h) *Transactions Imposing Interchange Commitments.* (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (''interchange commitment''), the following additional information must be provided:

(i) The existence of that provision or agreement and the affected interchange points must be identified; and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (h)(1) of this section by filing, and serving upon the petitioner, a ''Motion for Access to Confidential Documents,'' containing:

(i) An explanation of the party's need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

7. Amend § 1150.43 by adding paragraph (h) to read as follows:

§ 1150.43 Information to be contained in notice for small line acquisitions.

* * * * *

(h) *Transactions Imposing Interchange Commitments.* (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (''interchange commitment''), the following additional information must be provided:

(i) The existence of that provision or agreement and the affected interchange points must be identified; and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (h)(1) of this section by filing, and serving upon the petitioner, a ''Motion for Access to Confidential Documents,'' containing:

(i) An explanation of the party's need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

8. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

9. Amend § 1180.4 by adding paragraph (g)(4) to read as follows:

§ 1180.4 Procedures.

(g) Notice of exemption. * * *

(4) *Transactions Imposing Interchange Commitments.* (i) If a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (''interchange commitment''), the following additional information must be provided:

(A) The existence of that provision or agreement and the affected interchange points must be identified; and

(B) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(ii) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to § 1180.4(g)(4)(i) of this section by filing, and serving upon the petitioner, a ''Motion for Access to Confidential Documents,'' containing:

(A) An explanation of the party's need for the information; and

(B) An appropriate draft protective order and confidentiality undertaking(s)

that will ensure that the documents are kept confidential.

[FR Doc. E7–21569 Filed 11–1–07; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 72, No. 212

Friday, November 2, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0135]

Citrus Greening and Asian Citrus Psyllid; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to a new Federal order that restricts the interstate movement of regulated articles from areas quarantined for citrus greening disease and the Asian citrus psyllid. The environmental assessment documents our review and analysis of the potential environmental impacts associated with the implementation of the new Federal order. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 3, 2007.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0135 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0135, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0135.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen R. Poe, Senior Operations Officer, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus greening, also known as huanglongbing, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease that attacks the vascular system of plants. The bacteria are phloem-limited and cause yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback of citrus plants. It greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where citrus greening is endemic, citrus trees decline and die within a few years and may never produce usable fruit. Citrus greening is widespread in Asia, Africa, and the Saudi Arabian Peninsula. It has been reported in Sao Paulo, Brazil. It was first detected in the United States in Miami-Dade County, Florida, in 2005, and now has been confirmed in 28 counties in Florida.

Citrus greening is transmitted by two insect vectors in the family Psyllidae: *Diaphorina citri* Kuwayama, the Asian citrus psyllid, and *Trioza erytreae* (del Guercio), the African citrus psyllid. It can also be transmitted by grafting, by dodder, and possibly by seed. Asian citrus psyllid can cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. High populations feeding on a citrus shoot can kill the growing tip. More importantly, this psyllid is able to transmit an endocellular bacterium, Candidatus Liberobacter asiaticus, which causes citrus greening disease. Asian citrus psyllid is currently present in Florida, Hawaii, Puerto Rico, Guam, and several counties in Texas. The African citrus psyllid is not known to be present in the United States.

On September 16, 2005, the Animal and Plant Health Inspection Service imposed restrictions on the interstate movement of all citrus greening host plant material and Asian citrus psyllid host plant material from quarantined areas in Florida in order to prevent the artificial spread of citrus greening and of Asian citrus psyllid. APHIS subsequently updated those restrictions by issuing a Federal order on May 3, 2006. This action was necessary due to the continuing spread of both Citrus greening and Asian citrus psyllid. Since that time, infestations of citrus greening have been confirmed in a total of 28 counties in Florida. Asian citrus psyllid has now been confirmed in several counties in Texas, and throughout the States of Florida and Hawaii, the commonwealth of Puerto Rico, and the territory of Guam. APHIS is therefore issuing a new Federal order that updates and replaces the previous Federal order regarding quarantines to prevent the dissemination of citrus greening or Asian citrus psyllid.

APHIS and the Florida Department of Agriculture and Consumer Services have imposed restrictions on the movement of certain material from counties in Florida where citrus greening is present. Even with these actions, citrus greening has continued to expand its range within the State of Florida and Asian citrus psyllid has been found throughout Florida and in other areas of the United States, creating a greater range than had been anticipated. In order to protect the

domestic citrus industry, including the individual farmers who comprise the base of that industry, APHIS must act quickly to expand the Federal order.

APHIS has completed an assessment of the environmental impacts anticipated from the implementation of a new Federal order for the domestic quarantine of citrus greening disease and Asian citrus psyllid. There is now scientific evidence showing that orange jasmine (*Murraya paniculata*) and related species are hosts of citrus greening as well as the Asian citrus psyllid. Previously, orange jasmine was regulated only as a host of the Asian citrus psyllid. The new Federal order will add *Murraya* spp. to the citrus greening host list. The main difference in the new Federal order is the expansion of the citrus greening quarantined area in Florida and the distinction made between citrus greening and Asian citrus psyllid quarantine areas.

APHIS' review and analysis of the potential environmental impacts associated with the implementation of the new Federal order are documented in detail in an environmental assessment titled ''Movement of Regulated Articles from a Citrus Greening Quarantine Zone'' (October 2007). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

Due to the serious and destructive nature of citrus greening disease, it is necessary to expand the number of counties in Florida from which the movement of plants that are hosts of citrus greening is present in order to prevent the further spread and infestation. It is also necessary to expand the areas quarantined due to the presence of Asian citrus psyllid so that host plants can be treated and inspected before being moved interstate. Since citrus greening is a highly injurious citrus disease, and the Asian citrus psyllid is harmful both as the insect vector of the disease and as a significant citrus pest in its own right, APHIS has determined that it may be necessary to immediately address both the disease and the associated insect pest. This will be accomplished by the restriction of hosts of citrus greening from areas where the disease is present, and the regulation and treatment of plants that are hosts of the psyllid from those areas where the insect is present and may be spread through the movement of infested nursery stock. Therefore, APHIS may have to begin the expanded citrus greening regulatory program in Florida immediately and issue a finding of no significant impact for the environmental assessment before the comment period on the environmental assessment concludes. Nevertheless, all comments received on the environmental assessment will be evaluated and responded to after the comment period has ended.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC this 30th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–21679 Filed 11–1–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest, Kawishiwi Ranger District, MN, Glacier Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement (EIS) for the Glacier Project. The proposed activities would manage forest vegetation composition, structure, and spatial patterns (including habitat de-fragmentation), and the transportation system associated with these activities.

DATES: Comments concerning the scope of the analysis must be received by November 30, 2007. The draft environmental impact statement is expected in January 2008 and the final environmental impact statement is expected in May 2008.

ADDRESSES: Send written comments to Mark E. Van Every, Kawishiwi District Ranger, Glacier Project EIS, 1393 Hwy 169, Ely, MN 55731. Send electronic comments to *comments-eastern-superior-kawishiwi@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Susan Duffy, Glacier Project Leader, 1393 Hwy 169, Ely, MN 55731, Telephone (218) 365–2097.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Glacier Project is to move the area towards the vegetation and landscape ecosystem desired conditions described in the 2004 Superior National *Land and Resource Management Plan.*

Proposed Action

The Proposed Action would manage forest vegetation composition, structure, and spatial patterns and the transportation system associated with these activities. Proposed activities include: creating young forest on approximately 5,500 acres, improving stand structure and within-stand diversity on approximately 2,500 acres, and restoring stand conditions through a variety of non-harvest activities such as planting, biomass removal, and conducting prescribed burns to reduce risk of wildfire on approximately 5,200 acres. The project has been specifically designed to:

- Maintain existing patches of mature forest greater than 300 acres that would not lose interior forest qualities during the next ten years.
- Create one 300-plus-acre patch of young forest by harvesting a mature patch that will not meet interior forest characteristics in ten years.
- Reduce fragmentation by proposing regeneration harvests adjacent to existing young stands, including those proposed to be harvested on other ownership.
- Maintain and improve habitat needed for threatened, endangered, and sensitive species.

Possible Alternatives

Alternative 1 is the no-action alternative. Alternative 2, the Modified Proposed Action, was developed based on the proposed action that was included in the Scoping Report and incorporates comments from the public and additional field information. Alternative 3 was developed to address the significant issues raised by the public during the Scoping comment

period. The Responsible Official directed the interdisciplinary team to develop an alternative that would not harvest or build roads directly adjacent to the BWCAW and would not harvest in an area perceived to be at higher risk from non-native invasive species.

Responsible Official

Mark E. Van Every, Kawishiwi District Ranger, 1393 Hwy 169, Ely MN, 55731.

Nature of Decision To Be Made

An environmental analysis for the Glacier Project will evaluate site-specific issues, consider management alternatives, and analyze the potential effects of the proposed action and alternatives. The scope of the project is limited to decisions concerning activities within the Glacier Project Area that meet the Purpose and Need, as well as desired conditions. An environmental impact statement will provide the Responsible Official, Mark E. Van Every, with the information needed to decide which actions, if any, to approve.

Scoping Process

The District Ranger mailed the Glacier Project Scoping Report to area landowners and other interested individuals and groups in May 2007. Based on comments received during the scoping period and additional information gathered by resource specialists, the District Ranger has directed the Glacier Project Interdisciplinary Team to develop an Environmental Impact Statement. The public will be notified that an EIS is being developed and will have an additional opportunity to submit comments before the Draft EIS will be completed. The public will be notified of the significant issues and possible alternatives that will be used to disclose the effects of the project. A public meeting is planned during the comment period on the Draft EIS.

Preliminary Issues

For significant issues were identified based on comments the public submitted on the May 2007 Scoping Report. These issues involve vegetation and associated road management adjacent to the Boundary Waters Canoe Area Wilderness, project activities that have the potential to affect lynx and lynx habitat, concern about non-native invasive species, and impacts to Forest Plan Inventoried Roadless Areas.

Permits or Licenses Required

Easement or permission to cross non-federal property may be needed to access some treatment units to implement Forest Service activities.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Written comments will be solicited through a notice that will be sent to the Glacier Project mailing list.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the court. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 26, 2007.

Mark E. Van Every,

Kawishiwi District Ranger.

[FR Doc. 07–5457 Filed 11–1–07; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: December 2, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Men's Charcoal Colored Cargo Pants HS2347 (All sizes)
Men's Grey Colored Short Sleeve Polo w/ pocket 2101–GR (All sizes)
Men's Navy Colored Cargo Pants HS2347 (All sizes)
Men's Navy Colored Labcoat 380 (All sizes)
Men's Navy Colored Long Sleeve Twill 1790–NV (All sizes)
Men's Navy Colored Short Sleeve Polo w/ pocket 2101–NV (All sizes)
Men's Navy Colored Side Elastic Pants E–2578 (All sizes)
Men's White Colored Long Sleeve Twill 1790–WT (All sizes)
Men's White Colored Short Sleeve Polo w/ pocket 2101–WH (All sizes)
Men's Wine Colored Long Sleeve Twill 1790–WN (All sizes)
Men's Wine Colored Short Sleeve Polo w/ pocket 2101–WN (All sizes)
Navy Colored 3–1 Parka w/reflective panels HS3334 (All sizes)
Unisex Grey Colored Hooded Sweatshirt 1805H (All sizes)
Unisex Grey Colored Sweatshirt 73157 (All sizes)
Unisex Hunter Green Colored Hooded Sweatshirt 1805H (All sizes)
Unisex Hunter Green Colored Sweatshirt 73157 (All sizes)
Unisex Long Sleeve Denim 3211DD (All sizes)
Unisex Navy Colored Hooded Sweatshirt 1805H (All sizes)
Unisex Navy Colored Long Sleeve Polo w/ pocket 2108–NV (All sizes)
Unisex Navy Colored Sweatshirt 73157 (All sizes)
Unisex Wine Colored Long Sleeve Polo w/ pocket 2108–WN (All sizes)
Women's Charcoal Colored Cargo Pants HS2351 (All sizes)
Women's Grey Colored Short Sleeve Polo w/ o Pocket OB12–GR (All sizes)
Women's Navy Colored Cargo Pants HS2351 (All sizes)
Women's Navy Colored Labcoat 382 (All sizes)
Women's Navy Colored Long Sleeve Twill 5790–NV (All sizes)
Women's Navy Colored Short Sleeve Polo w/ o Pocket OB12–NV (All sizes)
Women's Navy Colored Side Elastic Pants E–8578 (All sizes)
Women's White Colored Long Sleeve Twill 5790–WT (All sizes)
Women's White Colored Short Sleeve Polo w/o Pocket OB12–WH (All sizes)
Women's Wine Colored Long Sleeve Twill 5790–WN (All sizes)
Women's Wine Colored Short Sleeve Polo w/ o Pocket OB12–WN (All sizes)
NPA: Human Technologies Corporation, Utica, NY.
Coverage: C-List for the total Government requirements for U.S. Department of Agriculture, Minneapolis, MN.
Contracting Activity: U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Marketing and Regulatory Programs Business Services (MRPBS), Minneapolis, MN.

Services

Service Type/Location: Document Destruction, Internal Revenue Service, 227 N. Bronough Street, Tallahassee, FL.
NPA: Challenge Enterprises of North Florida, Inc., Green Cove Springs, FL.
Contracting Activity: Department of the Treasury, Internal Revenue Services, Chamblee, GA.

Service Type/Location: Document Destruction, Southwest VA Consolidated Mail-Out Pharmacy (CMOP), 3675 E. Britania Dr., Tucson, AZ.
NPA: Beacon Group SW, Inc., Tucson, AZ.
Contracting Activity: Department of Veteran Affairs, Consolidated Mail-Out Pharmacy (CMOP), Tucson, AZ.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–21605 Filed 11–1–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 2, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: On September 14, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 52542) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Mailroom Operations, Hubert H. Humphrey Building (200 Independence Avenue, SW.), Mary E. Switzer Building (330 C Street, SW.), Wilbur J. Cohen Building (330 Independence Avenue, SW.), Washington, DC.
NPA: Didlake, Inc., Manassas, VA.
Contracting Activity: Department of Health and Human Services—Program Support Center, Rockville, MD.

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–21606 Filed 11–1–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Department of Commerce ''Charting Our Energy Future'' Conference

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Commerce will host a one-day Conference during which experts from the federal government, U.S. industry, academia, and public interest groups will explore and discuss strategies to promote the rapid uptake of clean energy technologies in the United States, as set forth in the President's Advanced Energy Initiative and to follow up on the September 27–28 Major Economies Meeting.

DATES: Deadline for applications: December 16, 2007. Date of the event: February 5, 2008.

ADDRESSES: To apply to participate in the Conference, please contact Catherine Vial, Officeof Energy and Environmental Industries; Room 4053; U.S. Department of Commerce; 14th & Pennsylvania Avenue, NW., Washington, DC 20230; 202–482–2823; *catherine.vial@mail.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine Vial, Office of Energy and Environmental Industries; Room 4053; U.S. Department of Commerce; 14th & Pennsylvania Avenue, NW., Washington, DC 20230; 202–482–2823; *catherine.vial@mail.doc.gov.*

SUPPLEMENTARY INFORMATION: With his Advanced Energy Initiative, President Bush established a vision of an energy future in the United States where clean energy technologies ensure energy security, mitigate climate change, and provide energy for robust economic growth. In addition, with the Major Economies Meeting on Climate Change the President created a venue to work with all of the world's largest users of energy and largest producers of greenhouse gas emissions, to establish a new international approach on energy security and climate change in 2008 that will contribute to a global agreement by 2009 under the UN Framework Convention on Climate Change.

The Department of Commerce is hosting a one-day Conference to advance the President's climate change agenda and to support our business community by exploring practical steps government and industry can take to speed the commercialization and deployment of clean energy technologies in the United States.

The following issues will be explored during the Conference: (1) The potential to commercialize and deploy existing clean energy technologies in the near future; and (2) international best practices in promoting clean energy technologies. In addition, there will be focus sessions on the challenges and opportunities of technology; financing; public acceptance; commercialization; international cooperation; and regulatory issues.

The Department invites applications to participate in the Conference from industry leaders (CEO, President, or Senior Vice President level); state and local government officials; national and state legislators; recognized experts from academia and think-tanks; and senior government officials or business leaders representing international partners. A number of senior U.S. government officials will attend.

Applicants should provide information regarding their qualifications to participate in the event and make a valuable contribution. Participants will be selected according to their ability to successfully advance the goals of the Conference.

Catherine Vail,

Acting Director, Office of Energy and Environmental Industries, U.S. Department of Commerce.

[FR Doc. 07–5449 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–OR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Carbon and Certain Alloy Steel Wire Rod from Trinidad & Tobago: Notice of Court Decision Not In Harmony with Final Determination of the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 6, 2007, the United States Court of International Trade (''CIT'') affirmed the remand results made by the U.S. International Trade Commission (''ITC'') pursuant to the CIT's remand of the final determination of the antidumping duty investigation of carbon and certain alloy steel wire rod from Trinidad & Tobago. See Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 07–106, (Ct. Int'l Trade) (July 6, 2007). This case arises out of the ITC's final determination in the antidumping duty investigation. See [Investigations Nos. 701–TA–417–419 and 731–TA–953, 954, 956–959, 961, and 962 (Final)] Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 66662 (November 1, 2002) (''Final Determination''). The judgment in this case was not in harmony with the ITC's Final Determination.

EFFECTIVE DATE: July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5973 or (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION: In *Caribbean Ispat Limited v. United States*, 366 F. Supp. 2d 1300 (Ct. Int'l Trade 2005), the CIT affirmed the ITC's finding that subject imports from Trinidad and Tobago caused material injury to the domestic industry. In *Caribbean Ispat Limited v. United States*, 450 F.3d 1336 (Fed. Cir. 2006), the Court of Appeals for the Federal Circuit (''CAFC'') reversed the CIT's judgment, and remanded the case to the CIT with instructions to further remand the case to the ITC so that it may reconsider its causation analysis and directly address whether other dumped or fairly traded imports would have replaced the imports from Trinidad and Tobago without any beneficial effect on domestic producers.

On January 16, 2007, the ITC filed its remand results with the CIT. In the remand results, the ITC determined that it was unable to find that imports from other producers of subject merchandise would not have replaced subject imports from Trinidad and Tobago in the United States market. The ITC further found that the United States is not materially injured or threatened with material injury by reason of imports of subject merchandise from Trinidad and Tobago sold in the United States at less than fair value.

In its decision in *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (''Timken''), the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with an ITC determination,

and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision in this case on July 6, 2007, constitutes a decision of the court that is not in harmony with the *ITC Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will suspend liquidation of subject merchandise entered after the effective date of this notice pending a final and conclusive court decision.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: October 26, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–21617 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820]

Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review: Stainless Steel Bar From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 2, 2007.

FOR FURTHER INFORMATION CONTACT: David Goldberger at (202) 482–4136, Import Administration, AD/CVD Operations, Office 2, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Extension Of Time Limit For Preliminary Results

On April 27, 2007, the Department of Commerce (the Department) published a notice of initiation of administrative reviews of antidumping duty orders that included the antidumping duty order on stainless steel bar from France, covering the period March 1, 2006, through February 28, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007). Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to up to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The preliminary results of the administrative review of the antidumping duty order on stainless steel bar from France are currently scheduled to be completed on December 1, 2007. However, the Department finds that it is not practicable to complete the preliminary results in this administrative review within this time limit because additional time is needed to fully analyze the sales and cost–of-production questionnaire responses and supplemental questionnaire responses submitted by the respondent, and to conduct verifications of these responses.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results of this review by 120 days to March 30, 2008. Because March 30, 2008, falls on a non–business day, the Department will complete the preliminary results of this review no later than March 31, 2008, which is the next business day after the 120-day extension period. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: October 29, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–21625 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–921]

Notice of Initiation of Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 2, 2007.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Nancy Decker, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1279 and (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 2007, the Department of Commerce (the ''Department'') received a petition filed in proper form by Appleton Papers Inc. (the ''petitioner'') a domestic producer of lightweight thermal paper (''LWTP''). In response to the Department's requests, the petitioner provided timely information supplementing the petition on September 28, October 2, and October 23, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), the petitioner alleges that manufacturers, producers, or exporters of LWTP in the People's Republic of China (the ''PRC''), receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and the petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation (*see* ''Determination of Industry Support for the Petition'' section below).

Period of Investigation

The period of investigation is January 1, 2006, through December 31, 2006.

Scope of the Investigation

The merchandise covered by each of this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (''g/m^2'') (with a tolerance of ± 4.0 g/m^2) or less; irrespective of dimensions;[1] with or without a base coat[2] on one or both sides; with thermal active coating(s)[3] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[4] and without

[1] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo rolls and converted rolls (as well as LWTP in any other forms, presentations, or dimensions) are covered by the scope of these investigations.

[2] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[3] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[4] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point–of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these investigations may be classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheadings 4811.90.8040 and 4811.90.9090.[5] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (''CRU''), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the PRC for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China, with representatives of the Government of the PRC on September 28, 2007. *See* the Memorandum to The File, entitled, ''Consultations with Officials from the Government of the People's Republic of China'' (September 28, 2007) on file in the CRU of the Department of Commerce, Room B–099.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed by or on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that lightweight thermal paper, both jumbo rolls and converted slit rolls, constitute a single domestic like product, which is defined further in the ''Scope of the Investigation'' section above, and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* the *Countervailing Duty Investigation Initiation Checklist: Lightweight Thermal Paper from the People's Republic of China* (*PRC Initiation Checklist*) at Attachment II, on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

On October 9, 2007, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 702(c)(4)D) of the Act, because it was ''not clear from the petitions whether the industry support criteria have been met...'' *See Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petitions: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China; and the Countervailing Duty Petition: Lightweight Thermal Paper from the People's Republic of China*, 72 FR 58639 (October 16, 2007).

On October 12 and 15, 2007, we issued polling questionnaires to all known producers of jumbo rolls and converted slit rolls of lightweight thermal paper identified in the petitions, submissions from other interested parties, and by the ITC. The questionnaires are on file in the CRU in room B–099 of the main Department of Commerce building. We requested that each company complete the polling questionnaire, certify its response, and fax its response to the Department by the due date. For a detailed discussion of the responses received *see PRC Initiation Checklist* at Attachment II.

Our analysis of the data indicates that the domestic producers of lightweight thermal paper who support the petitions

[5] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for ''other,'' including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for ''other,'' including LWTP). Petitioner indicated that, from time to time, LWTP also may have been entered under HTSUS subheading 3703.90, HTSUS heading 4805, and perhaps other subheadings of the HTSUS.

account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production (by quantity and U.S. dollar sales value) of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See PRC Initiation Checklist* at Attachment II. Accordingly, the Department determines that the industry support requirements of section 702(c)(4)(A) of the Act have been met. Therefore, the Department determines that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. *See PRC Initiation Checklist* at Attachment II.

Injury Test

Because the PRC, is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated subsidized imports of the subject merchandise. The petitioner contends that the industry's injured condition is illustrated by reduced market share, increased inventories, lost sales, reduced production, reduced capacity and capacity utilization rate, reduced shipments, underselling and price depression or suppression, lost revenue, and a decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See PRC Initiation Checklist* at Attachment III (Injury).

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that; (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations. The Department has examined the countervailing duty petition on LWTP from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of LWTP in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see *PRC Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

Preferential Lending

1. Government Policy Lending Program
2. Loans provided pursuant to the Northeast Revitalization Program
3. Loan guarantees from government–owned and controlled banks

Income Tax Programs

4. ''Two Free, Three Half'' program
5. Income tax exemption program for export–oriented foreign investment enterprises (''FIEs'')
6. Corporate income tax refund program for reinvestment of FIE profits in export–oriented enterprises
7. Local income tax exemption and reduction program for ''productive'' FIEs
8. Reduced income tax rates for FIEs based on location
9. Reduced income tax rate for knowledge or technology intensive FIEs
10. Reduced income tax rate for high or new technology FIEs
11. Preferential tax policies for research and development at FIEs
12. Income tax credits on purchases of domestically produced equipment by domestically–owned companies

Indirect Tax Programs and Import Tariff Program

13. Export payments characterized as VAT rebates
14. VAT and tariff exemptions on imported equipment

Grant Programs

15. State Key Technology Renovation Program Fund

Provincial Subsidy Programs

16. Funds for ''outward expansion'' of industries in Guangdong Province
17. Export interest subsidy funds for enterprises located in Shenzhen City or Zhejiang Province
18. Loans and interest subsidies pursuant to the Liaoning Province's five-year framework

Currency Programs

19. Currency retention

For further information explaining why the Department is investigating these programs, see *China Initiation Checklist*.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

A. *Currency manipulation*

Petitioner alleges that the PRC government's policy of maintaining an undervalued RMB is an export subsidy that provides either a direct transfer of funds or the provision of a good or service at less than adequate remuneration. Petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate the currency manipulation program.

B. *Provision Of Goods Or Services For Less Than Adequate Remuneration*

1. Electricity and natural gas
2. Water
3. Papermaking chemicals
4. Land

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection data for U.S. imports during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized LWTP from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 29, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–21616 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 070911510–7512–01]

Announcing Request for Candidate Algorithm Nominations for a New Cryptographic Hash Algorithm (SHA–3) Family

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for nominations for candidate hash algorithms.

SUMMARY: This notice solicits nominations from any interested party for candidate algorithms to be considered for SHA–3, and specifies how to submit a nomination package. It presents the nomination requirements and the minimum acceptability requirements of a ''complete and proper'' candidate algorithm submission. The evaluation criteria that will be used to appraise the candidate algorithms are also described.

DATES: Candidate algorithm nomination packages must be received by October 31, 2008. Further details are available in section 2.

ADDRESSES: Candidate algorithm submission packages should be sent to: Ms. Shu-jen Chang, Information Technology Laboratory, *Attention*: Hash Algorithm Submissions, 100 Bureau Drive—Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

FOR FURTHER INFORMATION CONTACT: For general information, send e-mail to *hash-function@nist.gov.* For questions related to a specific submission package, contact Ms. Shu-jen Chang, National Institute of Standards and Technology, 100 Bureau Drive—Stop 8930, Gaithersburg, MD 20899–8930; telephone: 301–975–2940 or via fax at 301–975–8670, e-mail: *shu-jen.chang@nist.gov.*

SUPPLEMENTARY INFORMATION: This notice contains the following sections:

1. Background
2. Requirements for Candidate Algorithm Submission Packages
   2.A Cover Sheet
   2.B Algorithm Specifications and Supporting Documentation
   2.C Optical Media
   2.D Intellectual Property Statements/Agreements/Disclosures
   2.E General Submission Requirements
   2.F Technical Contacts and Additional Information
3. Minimum Acceptability Requirements
4. Evaluation Criteria
   4.A Security
   4.B Cost
   4.C Algorithm and Implementation Characteristics
5. Initial Planning for the First SHA–3 Candidate Conference
6. Plans for the Candidate Evaluation Process
   6.A Overview
   6.B Round 1 Technical Evaluation
   6.C Round 2 Technical Evaluation
7. Miscellaneous

Authority: This work is being initiated pursuant to NIST's responsibilities under the Federal Information Security Management Act (FISMA) of 2002, Public Law 107–347.

1. Background

Modern, collision resistant hash functions were designed to create small, fixed size message digests so that a digest could act as a proxy for a possibly very large variable length message in a digital signature algorithm, such as RSA or DSA. These hash functions have since been widely used for many other ''ancillary'' applications, including hash-based message authentication codes, pseudo random number generators, and key derivation functions.

A series of related hash functions have been developed, such as MD4, MD5, SHA–0, SHA–1 and the SHA–2 family, (which includes 224, 256, 384 and 512-bit variants); all of these follow the Merkle-Damgard construct. NIST began the standardization of the SHA hash functions in 1993, with a specification of SHA–0 in the Federal Information Processing Standards Publication (FIPS PUBS) 180, the Secure Hash Standard; subsequent revisions of the FIPS have replaced SHA–0 with SHA–1 and added the SHA–2 family in FIPS 180–1 and FIPS 180–2, respectively.

Recently, cryptanalysts have found collisions on the MD4, MD5, and SHA–0 algorithms; moreover, a method for finding SHA–1 collisions with less than the expected amount of work has been published, although at this time SHA–1 collisions have not yet been demonstrated. Although there is no specific reason to believe that a practical attack on any of the SHA–2 family of hash functions is imminent, a successful collision attack on an algorithm in the SHA–2 family could have catastrophic effects for digital signatures.

NIST has decided that it is prudent to develop a new hash algorithm to augment and revise FIPS 180–2. The new hash algorithm will be referred to as ''SHA–3'', and will be developed through a public competition, much like the development of the Advanced Encryption Standard (AES). NIST intends that SHA–3 will specify an unclassified, publicly disclosed algorithm(s), which is available worldwide without royalties or other intellectual property restrictions, and is capable of protecting sensitive information for decades. Following the close of the submission period, NIST intends to make all ''complete and proper'' (as defined in section 3) submissions publicly available for review and comment.

NIST does not currently plan to withdraw SHA–2 or remove it from the revised Secure Hash Standard; however, it is intended that SHA–3 can be directly substituted for SHA–2 in current applications, and will significantly improve the robustness of NIST's overall hash algorithm toolkit. Therefore, the submitted algorithms for SHA–3 must provide message digests of 224, 256, 384 and 512 bits to allow substitution for the SHA–2 family. The 160-bit hash value produced by SHA–1 is becoming too small to use for digital signatures, therefore, a 160-bit replacement hash algorithm is not contemplated.

Many cryptographic applications that are currently specified in FIPS and NIST Special Publications require the use of a NIST-approved hash algorithm. These publications include:

- FIPS 186–2, Digital Signature Standard;
- FIPS 198, The Keyed-Hash Message Authentication Code (HMAC);
- SP 800–56A, Recommendation for Pair-Wise Key Establishment Schemes Using Discrete Logarithm Cryptography; and
- SP 800–90, Recommendation for Random Number Generation Using Deterministic Random Bit Generators (DRBGs).

The SHA–3 algorithm is expected to be suitable for these applications.

Since SHA–3 is expected to provide a simple substitute for the SHA–2 family of hash functions, certain properties of the SHA–2 hash functions must be preserved, including the input parameters; the output sizes; the collision resistance, preimage resistance, and second-preimage resistance properties; and the ''one-pass'' streaming mode of execution. However, it is also desirable that the selected SHA–3 algorithm offer features or properties that exceed, or improve upon, the SHA–2 hash functions. For example, the selected SHA–3 algorithm may offer efficient integral options, such as randomized hashing, that fundamentally improve security, or it may be parallelizable, more efficient to implement on some platforms, more suitable for certain applications, or may avoid some of the incidental ''generic'' properties (such as length extension) of the Merkle-Damgard construct that often result in insecure applications.

NIST expects SHA–3 to have a security strength that is at least as good as the hash algorithms currently specified in FIPS 180–2, and that this security strength will be achieved with significantly improved efficiency. NIST also desires that the SHA–3 hash functions will be designed so that a possibly successful attack on the SHA–2 hash functions is unlikely to be applicable to SHA–3. The SHA–3 family should be suitably flexible for a wide variety of implementations, even though it may not operate with optimal efficiency in each and every potential application.

For interoperability, NIST strongly desires a single hash algorithm family (that is, that different size message digests be internally generated in as similar a manner as possible) to be selected for SHA–3. However, if more than one suitable candidate family is identified, and each provides significant advantages, NIST may consider recommending more than one family for inclusion in the revised Secure Hash Standard.

2. Requirements for Candidate Algorithm Submission Packages

Candidate algorithm nomination packages must be received by October 31, 2008. Submission packages received before August 31, 2008 will be reviewed for completeness by NIST; the submitters will be notified of any deficiencies by September 30, 2008, allowing time for deficient packages to be amended by the submission deadline. No amendments to packages will be permitted after the submission deadline. Requests for the withdrawal of submission packages will only be honored until the submission deadline.

Due to the specific requirements of the submission package such as Intellectual Property Statements / Agreements / Disclosures as specified in section 2.D, e-mail submissions will not be accepted for these statements or for the initial submission package. However, e-mail submissions of amendments to the initial submission package will be allowed prior to the submission deadline.

''Complete and proper'' submission packages received in response to this notice will be posted at *http://www.nist.gov/hash-competition* for inspection. To be considered as a ''complete'' submission package (and continue further in the hash algorithm consideration process), candidate algorithm submission packages must contain the following (as described in detail below):

- Cover Sheet.
- Algorithm Specifications and Supporting Documentation.
- Optical Media.
- Intellectual Property Statements/Agreements/Disclosures.
- General Submission Requirements.

Each of these items is discussed in detail below.

2.A Cover Sheet

A cover sheet shall contain the following information:

- Name of the submitted algorithm.
- Principal submitter's name, e-mail address, telephone, fax, organization, and postal address.
- Name(s) of auxiliary submitter(s).
- Name of the algorithm inventor(s)/developer(s).
- Name of the owner, if any, of the algorithm. (normally expected to be the same as the submitter).
- Signature of the submitter.
- (optional) Backup point of contact (with telephone, fax, postal address, e-mail address).

2.B Algorithm Specifications and Supporting Documentation

2.B.1 A complete written specification of the algorithm shall be included, consisting of all necessary mathematical operations, equations, tables, diagrams, and parameters that are needed to implement the algorithm. The document shall include design rationale (e.g., the rationale for choosing the specific number of rounds for computing the hashes) and an explanation for all the important design decisions that are made. It should also include 1) any security argument that is applicable, such as a security reduction proof, and 2) a preliminary analysis, such as possible attack scenarios for collision-finding, first-preimage-finding, second-preimage-finding, length-extension attack, multicollision attack, or any cryptographic attacks that have been considered and their results.

In addition, the submitted algorithm may include a tunable security parameter, such as the number of rounds, which would allow the selection of a range of possible security/performance tradeoffs. If such a parameter is provided, the submission document must specify a recommended value for each digest size specified in Section 3, with justification. The submission should also provide any bounds that the designer feels are appropriate for the parameter, including a bound below which the submitter expects cryptanalysis to become practical. The tunable parameter may be used to produce weakened versions of the submitted algorithm for analysis, and permit NIST to select a different security/performance tradeoff than originally specified by the submitter, in light of discovered attacks or other analysis, and in light of the alternative algorithms that are available. NIST will consult with the submitter of the algorithm if it plans to select that algorithm for SHA–3, but with a different parameter value than originally specified by the submitter. Submissions that do not include such a parameter should include a weakened version of the submitted algorithm for analysis, if at all possible.

NIST is open to, and encourages, submissions of hash functions that differ from the traditional Merkle-Damgard model, using other structures, chaining modes, and possibly additional inputs. However, if a submitted algorithm cannot be used directly in current applications of hash functions as specified in FIPS or NIST Special Publications, the submitted algorithm must define a compatibility construct with the same input and output parameters as the SHA hash functions such that it can replace the existing SHA functions in current applications without any loss of security. The replacement of all SHA functions in any standardized application by this compatibility construct shall require no additional modification of the standard application beyond the alteration of any algorithm specific parameters already present in the standard, such as algorithm name and message block length. Submissions may optionally define other variants, constructs, or iterated structures for specific useful applications.

It should be noted that standards which refer to a block length are generally designed with the Merkle-Damgard model in mind, and a number of applications make additional assumptions—for example HMAC implicitly assumes that the message block length is larger than the message digest size. This is not to say that NIST requires the candidate algorithm to satisfy these assumptions, but in cases where the appropriate choice for a parameter such as message block length is not obvious, the submission package must specify a value that will preserve the security properties and functionality of any of the current standard applications.

2.B.2 A statement of the algorithm's estimated computational efficiency and memory requirements in hardware and software across a variety of platforms shall be included. At a minimum, the submitter shall state efficiency estimates for the ''NIST SHA–3 Reference Platform'' (specified in section 6.B) and for 8-bit processors. (Efficiency estimates for other platforms may be included at the submitters' discretion.) These estimates shall each include the following information, at a minimum:

a. Description of the platform used to generate the estimate, in sufficient detail so that the estimates could be verified in the public evaluation process (e.g., for software running on a PC, include information about the processor, clock speed, memory, operating system, etc.). For hardware estimates, a gate count (or estimated gate count) should be included.

b. Speed estimate for the algorithm on the platform specified in section 6.B. At a minimum, the number of clock cycles required to:

1. Generate one message digest, and
2. Set up the algorithm (e.g., build internal tables) shall be specified for each message digest size required in the Minimum Acceptability Requirements section (section 3) of this announcement.

c. Any available information on tradeoffs between speed and memory.

2.B.3 A series of Known Answer Tests (KATs) and Monte Carlo Tests (MCTs) shall be included as specified below. All of these KAT and MCT values shall be submitted electronically, in separate files, on a CD–ROM or DVD as described in section 2.C.3. Each file shall be clearly labeled with header information listing:

1. Algorithm name,
2. Test name,
3. Description of the test, and
4. Message digest size being tested.

All values within the file shall be clearly labeled (*e.g.*, message, message digest, etc.), and shall be in the exact format specified by NIST at *http://www.nist.gov/hash-competition*.

a. All applicable KATs shall be included that can be used to exercise various features of the algorithm. A set of KATs shall be included for each message digest size specified in section 3. Required KATs include:

i. If the candidate algorithm calculates intermediate values (e.g., internal rounds) for a message digest computation, then the submitter shall include known answers for those intermediate values for a 1-block and a 2-block message digest computation for each of the required message digest sizes. Examples of providing such intermediate values for the SHA family of hash functions are available at: *http://www.nist.gov/CryptoToolkitExamples*.

ii. If tables are used in the algorithm, then a set of KAT vectors shall be included to exercise every table entry.

Note: The submitter is encouraged to include any other KATs that exercise different features of the algorithm (e.g., for permutation tables, etc.). The purposes of these tests shall be clearly described in the file containing the test values.

b. Four MCTs, to be specified at the web site indicated below, shall be included, with message and message digest values, for each of the message digest sizes specified in section 3.

A link to a description of the required tests will be available at *http://www.nist.gov/hash-competition*. Required submission data for the MCTs will also be found at that location.

2.B.4 A statement of the expected strength (i.e., work factor) of the algorithm shall be included, along with any supporting rationale, for each of the security requirements specified in sections 4.A.ii and 4.A.iii, and for each message digest size specified in section 3.

2.B.5 An analysis of the algorithm with respect to known attacks (e.g., differential cryptanalysis) and their results shall be included.

To prevent the existence of possible ''trap-doors'' in an algorithm, the submitter shall explain the provenance of any constants or tables used in the algorithm, with justification of why these were not chosen to make some attack easier.

The submitter shall provide a list of known references to any published materials describing or analyzing the security of the submitted algorithm. The submission of copies of these materials (accompanied by a waiver of copyright or permission from the copyright holder for the SHA–3 public evaluation purposes) is encouraged.

2.B.6 A statement that lists and describes the advantages and limitations of the algorithm shall be included. Such advantages and limitations may address the ability to:

a. Implement the algorithm in various environments, including—but not limited to: 8-bit processors (e.g., smartcards), voice applications, satellite applications, or other environments where low power, constrained memory, or limited real-estate are factors. To demonstrate the efficiency of a hardware implementation of the algorithm, the submitter may include a specification of the algorithm in a nonproprietary Hardware Description Language (HDL).

b. Use the algorithm with message digest sizes other than those specified in section 3.

If the submitter believes that the algorithm has certain features that are deemed advantageous, then these should be listed and described, along with supporting rationale. Some examples of these features might include, for example: Mathematically (rather than empirically) designed tables, statistical basis for inter-round mixing, etc.

2.C Optical Media

All electronic data shall be provided on a single CD-ROM or DVD labeled with the submitter's name, and the algorithm name.

2.C.1 Reference Implementation

A reference implementation shall be submitted in order to promote the understanding of how the candidate algorithm may be implemented. This implementation shall consist of source code written in ANSI C; appropriate comments should be included in the code, and the code should clearly map to the algorithm description included under section 2.B.1. Since this implementation is intended for reference purposes, clarity in programming is more important than efficiency.

The reference implementation shall be capable of fully demonstrating the operation of the candidate algorithm. The reference implementation shall support all message digest sizes specified in section 3. Additionally, it must support all other message digest sizes that are claimed to be supported by the algorithm.

NIST will specify a set of cryptographic service calls, namely a cryptographic API, for the ANSI C implementations, which will be made available at *http://www.nist.gov/hash-competition*. All ANSI C submissions shall implement that API so that the

NIST test system can be compatible with all the submissions.

Separate source code for implementing the required KATs with the reference implementation shall also be included. This code shall be able to process input specified in the format indicated by NIST (on the web site as referred to under section 2.B.3) and run the required tests.

The reference implementation shall be provided in a directory labeled: \Reference Implementation.

2.C.2 Optimized Implementations

Two optimized implementations of the candidate algorithm shall be submitted—one implementation that is optimized for a 32-bit platform, and another for a 64-bit platform. The optimized implementations shall be specified in the ANSI C programming language. These implementations will be evaluated on 32- and 64-bit platforms.

General Requirements for Both Optimized Implementations:

- Both of the optimized implementations shall support the message digest sizes specified in section 3.
- Separate source code for implementing the required KATs and MCTs with the optimized implementations shall also be included. This code shall be able to process the input specified in the format indicated by NIST (on the Web site as referred to under section 2.B.3) and run the required tests.
- The submitter shall provide the optimized implementations in two separate directories labeled:
  - \Optimized_32 bit
  - \Optimized_64 bit

respectively.

- Additionally, submitters may, at their discretion, submit revised optimized implementations (for both the 32- and 64-bit implementations) for use in the Round 2 evaluation process, allowing additional time for improvements. These must be received prior to the beginning of the Round 2 evaluation; submitters will be notified of the specific deadline, as appropriate. Note that the optimized implementations on file with NIST at the close of the initial submission period will be the ones used by NIST in the Round 1 evaluation.

2.C.3 Test Values—Known Answer Tests and Monte Carlo Tests

The files on the CD–ROM or DVD shall contain all of the test values required under section 2.B.3 of this announcement. That section includes descriptions of the required tests, as well as a list of the values that must be provided.

The required format for the test vectors will be specified by NIST at *http://www.nist.gov/hash-competition.*

The test values shall be provided in a directory labeled: \KAT_MCT.

2.C.4 Supporting Documentation

To facilitate the electronic distribution of submissions to all interested parties, copies of all written materials must also be submitted in electronic form in PDF. Submitters are encouraged to use the thumbnail and bookmark features, to have a clickable table of contents (if applicable), and to include other links within the PDF as appropriate.

This electronic version of the supporting documentation shall be provided in a directory labeled: \Supporting Documentation.

2.C.5 General Requirements for Optical Media

For the portions of the submissions that may be provided electronically, the information shall be provided on a single CD-ROM or DVD using the ISO 9660 format. This disc shall have the following structure:

- \README.
- \Reference Implementation.
- \Optimized_32 bit.
- \Optimized_64 bit.
- \KAT_MCT.
- \Supporting Documentation.

The ''README'' file shall list all files that are included on this disc with a brief description of each.

All optical media presented to NIST must be free of viruses or other malicious code. The submitted media will be scanned for the presence of such code. If malicious code is found, NIST will notify the submitter and ask that a clean version of the optical media be re-submitted.

NIST will define a set of cryptographic service calls for the ANSI C implementations. These calls will be used by the NIST test software to make appropriate calls to the optimized and reference implementations, so that the test software does not have to be rewritten for each submitted algorithm. Therefore, both the optimized and reference implementations are required to conform to these specific calls. The implementations shall be supplied in source code so that NIST can compile and link them appropriately with the test software. The two selected sets of required calls will be available at the following location: *http://www.nist.gov/hash-competition*. NIST intends to make these available within three months after publication of this notice.

2.D Intellectual Property Statements/Agreements/Disclosures

Each submitted algorithm must be available worldwide on a royalty free basis during the period of the hash function competition. In order to ensure this and minimize any intellectual property issues, the following series of signed statements are required for a submission to be considered complete: Statement by the Submitter, Statement by Patent (and Patent Application) Owner(s) (if applicable), and Statement by Reference/Optimized Implementations' Owner(s). Note for the last two statements, separate statements must be completed if multiple individuals are involved.

2.D.1 Statement by the Submitter

I, _____ (print submitter's full name) do hereby declare that, to the best of my knowledge, the practice of the algorithm, reference implementation, and optimized implementations that I have submitted, known as _____ (print name of algorithm), may be covered by the following U.S. and/or foreign patents: _____ (describe and enumerate or state ''none'' if appropriate).

I do hereby declare that I am aware of no patent applications that may cover the practice of my submitted algorithm, reference implementation or optimized implementations.—OR—*I do hereby declare that the following pending patent applications may cover the practice of my submitted algorithm, reference implementation or optimized implementations:_____ (describe and enumerate).*

I do hereby understand that my submitted algorithm may not be selected for inclusion in the Secure Hash Standard. I also understand and agree that after the close of the submission period, my submission may not be withdrawn from public consideration for SHA–3. I further understand that I will not receive financial compensation from the U.S. Government for my submission. I certify that, to the best of my knowledge, I have fully disclosed all patents and patent applications relating to my algorithm. I also understand that the U.S. Government may, during the course of the lifetime of the SHS or during the FIPS public review process, modify the algorithm's specifications (e.g., to protect against a newly discovered vulnerability). Should my submission be selected for SHA–3, I hereby agree not to place any restrictions on the use of the algorithm, intending it to be available on a

worldwide, non-exclusive, royalty-free basis.

I do hereby agree to provide the statements required by Sections 2.D.2 and 2.D.3, below, for any patent or patent application identified to cover the practice of my algorithm, reference implementation or optimized implementations and the right to use such implementations for the purposes of the SHA–3 evaluation process.

I understand that NIST will announce the selected algorithm(s) and proceed to publish the draft FIPS for public comment. If my algorithm (or the derived algorithm) is not selected for SHA–3 (including those that are not selected for the second round of public evaluation), I understand that all rights, including use rights of the reference and optimized implementations, revert back to the submitter (and other owner[s], as appropriate). Additionally, should the U.S. Government not select my algorithm for SHA–3 at the time NIST ends the competition, all rights revert to the submitter (and other owner[s] as appropriate).

Signed:
Title:
Dated:
Place:

2.D.2 Statement by Patent (and Patent Application) Owner(s)

If there are any patents (or patent applications) identified by the submitter, including those held by the submitter, the following statement must be signed by each and every owner of the patent and patent applications above identified.

I, _____ (print full name), of _____ (print full postal address), am the owner or authorized representative of the owner (print full name, if different than the signer) of the following patent(s) and or patent application(s): _____ (enumerate), and do hereby agree to grant to any interested party if the algorithm known as _____ (print name of algorithm) is selected for SHA–3, an irrevocable nonexclusive royalty-free license to practice the referenced algorithm, reference implementation or the optimized implementations. Furthermore, I agree to grant the same rights in any other patent application or patent granted to me or my company that may be necessary for the practice of the referenced algorithm, reference implementation, or the optimized implementations.

Signed:
Title:
Dated:
Place:

Note that the U.S. Government may conduct research as may be appropriate to verify the availability of the submission on a royalty free basis worldwide.

2.D.3 Statement by Reference/Optimized Implementations' Owner(s)

The following must also be included:

I,_____(print full name), am the owner of the submitted reference implementation and optimized implementations and hereby grant the U.S. Government and any interested party the right to use such implementations for the purposes of the SHA–3 evaluation process, notwithstanding that the implementations may be copyrighted.

Signed:
Title:
Dated:
Place:

2.E General Submission Requirements

NIST welcomes both domestic and international submissions; however, in order to facilitate analysis and evaluation, it is required that the submission packages be in English. This requirement includes the cover sheet, algorithm specification and supporting documentation, source code, and intellectual property information. Any required information that is submitted in a language other than English shall render the submission package ''incomplete.'' Optional supporting materials (e.g., journal articles) in another language may be submitted.

Classified and/or proprietary submissions will not be accepted.

2.F Technical Contacts and Additional Information

For technical inquiries, send e-mail to *hash-function@nist.gov,* or contact Mr. William Burr, National Institute of Standards and Technology, 100 Bureau Drive—Stop 8930, Gaithersburg, MD 20899–8930; telephone: 301–975–2914 or via fax at 301–975–8670, e-mail: *william.burr@nist.gov* (*Attn:* Hash Algorithm Competition Questions).

Answers to germane questions will be posted at *http://www.nist.gov/hash-competition*. Questions and answers that are not pertinent to this announcement may not be posted. NIST will endeavor to answer all questions in a timely manner.

3. Minimum Acceptability Requirements

Those packages that are deemed to be ''complete'' will be evaluated for the inclusion of a ''proper'' candidate algorithm. To be considered as a ''proper'' candidate algorithm submission (and continue further in the SHA–3 Development Process), a candidate hash algorithm shall meet the following minimum acceptability requirements:

1. The algorithm shall be publicly disclosed and available worldwide without royalties or any intellectual property restrictions.

2. The algorithm shall be implementable in a wide range of hardware and software platforms.

3. The candidate algorithm shall be capable of supporting message digest sizes of 224, 256, 384, and 512 bits, and shall support a maximum message length of at least 2^{64}–1 bits. Submitted algorithms may support other message digest sizes and maximum message lengths, and such features will be taken into consideration during the analysis and evaluation period.

(End of minimum acceptability requirements).

A candidate algorithm submission package that is complete (as defined above) and whose algorithm meets the minimum acceptability requirements (as defined immediately above) will be deemed to be a ''complete and proper'' submission. A submission that is deemed otherwise at the close of the submission period will receive no further consideration. Submissions that are ''complete and proper'' will be posted at *http://www.nist.gov/hash-competition* for public review.

4. Evaluation Criteria

In order to provide a basis for the analysis and evaluation of hash algorithms submitted to be considered for SHA–3, evaluation criteria will be used to review candidate algorithms. NIST will form an internal selection panel composed of NIST employees to analyze the candidate algorithms; the evaluation process will be discussed in section 6. All of NIST's analysis results will be made publicly available.

Although NIST will be performing its own analyses of the candidate algorithms, NIST strongly encourages public evaluation and publication of the results, including any complete or partial analysis of a candidate algorithm or component of an algorithm (e.g., the compression function or iterative structure), and whether the result is positive or negative. NIST will take into account its own analysis, as well as the public comments that are received in response to the posting of the ''complete and proper'' submissions, to make its decision on the selection of SHA–3.

Candidate algorithms with submission packages deemed to be ''complete and proper'' will be compared, based on the following

factors (ranked in the order of relative importance):

4.A Security

The security provided by an algorithm is the most important factor in the evaluation. Algorithms will be judged on the following factors:

i. Applications of the Hash Functions

Algorithms having the same hash length will be compared for the security that may be provided in a wide variety of cryptographic applications, including digital signatures (FIPS 186–2), key derivation (NIST Special Publication 800–56A), hash-based message authentication codes (FIPS 198), deterministic random bit generators (SP 800–90), and additional applications that may be brought up by NIST or by the public during the evaluation process. Claimed applications of the hash functions will be evaluated for their practical importance if this evaluation is necessary for comparing the submitted hash algorithms.

ii. Specific Requirements When Hash Functions Are Used To Support HMAC, Pseudo Random Functions (PRFs), and Randomized Hashing

NIST requires that the selected SHA–3 support HMAC, PRFs, and randomized hashing. Each candidate algorithm must have at least one construction to support HMAC as a PRF; it may have additional constructions for other, non-HMAC based PRFs, or for use in a randomized hashing scheme. The following criteria will be used to evaluate each candidate algorithm of message digest size n in such constructions.

- When the candidate algorithm is used with HMAC to construct a PRF as specified in the submitted package, that PRF must resist any distinguishing attack that requires much fewer than $2^{n/2}$ queries and significantly less computation than a preimage attack.
- Any additional PRF constructions specified for use with the candidate algorithm must provide the security that is claimed in the submission document.
- If a construct is specified for the use of the candidate algorithm in a randomized hashing scheme, the construct must, with overwhelming probability, provide n bits of security against the following attack: The attacker chooses a message, M_1. The specified construct is then used on M_1 with a randomization value r_1 that has been randomly chosen without the attacker's control after the attacker has supplied M_1. Given r_1, the attacker then attempts to find a second message M_2 and randomization value r_2 that yield the same randomized hash value.

iii. Additional Security Requirements of the Hash Functions

In addition to the specific requirements mentioned above, NIST expects the SHA–3 algorithm of message digest size n to meet the following security requirements at a minimum. These requirements are believed to be satisfiable by fairly standard hash algorithm constructions; any result that shows that the candidate algorithm does not meet these requirements will be considered to be a serious attack.

- Collision resistance of approximately $n/2$ bits,
- Preimage resistance of approximately n bits,
- Second-preimage resistance of approximately n-k bits for any message shorter than 2^k bits,
- Resistance to length-extension attacks, and
- Any m-bit hash function specified by taking a fixed subset of the candidate function's output bits is expected to meet the above requirements with m replacing n. (Note that an attacker can choose the m-bit subset specifically to allow a limited number of precomputed message digests to collide, but once the subset has been chosen, finding additional violations of the above properties is expected to be as hard as described above.)

Increasing the second preimage resistance property and resistance against other attacks, such as multicollision attacks, will be viewed positively by NIST; however, this could also have performance implications. Submitters should be prepared to argue for their overall security/performance trade-offs.

iv. Evaluations Relating to Attack Resistance

Hash algorithms will be evaluated against attacks or observations that may threaten existing or proposed applications, or demonstrate some fundamental flaw in the design, such as exhibiting nonrandom behavior and failing statistical tests.

Claimed attacks will be evaluated for their practicality and for their impact on applications. Attacks that violate the security of an existing FIPS or NIST Special Publication's use of a hash function will be given more weight than attacks that violate the security of other applications; and attacks on rare or obscure applications may be given relatively little weight.

Hash algorithms will be evaluated not only for their resistance against previously known attacks, but also for their resistance against attacks discovered during the evaluation process, and for their likelihood of resistance against future attacks.

v. Other Consideration Factors

In addition to the evaluation factors mentioned above, the quality of the security arguments/proofs, the clarity of the documentation of the algorithm, the quality of the analysis on the algorithm performed by the submitters, the simplicity of the algorithm, and the confidence of NIST and the cryptographic community in the algorithm's long-term security may all be considered.

4.B Cost

As described in section 2.C.2, submitters of hash algorithms may submit revised optimized implementations for use in the Round 2 evaluation process. In the following discussion, it should be noted that all technical evaluations are performed either on the optimized implementations that are received initially, or on the revised implementations that are received before the beginning of Round 2.

i. *Computational efficiency:* The evaluation of the computational efficiency of the candidate algorithms will be applicable to both hardware and software implementations. The Round 1 analysis by NIST will focus primarily on software implementations; hardware implementations will be addressed more thoroughly during the Round 2 analysis.

Computational efficiency essentially refers to the speed of the algorithm. The computational efficiency will be analyzed using each submission's optimized implementations on a variety of platforms as specified in Section 6.B, and for a variety of input message lengths. The data in the submission packages and public comments on each algorithm's efficiency (particularly for various platforms and applications) will also be taken into consideration by NIST.

ii. *Memory requirements:* The memory required to implement a candidate algorithm—for both hardware and software implementations of the algorithm—will also be considered during the evaluation process. The Round 1 analysis will focus primarily on software implementations; hardware implementations will be addressed more thoroughly during Round 2.

Memory requirements will include such factors as gate counts for hardware implementations, and code size and RAM requirements for software implementations.

Testing will be performed by NIST using the optimized implementations provided by the submitters. Memory requirement estimates (for different platforms and environments) that are included in the submission package or the revised optimization package will also be taken into consideration by NIST. Input from the public evaluations of each algorithm's memory requirements (particularly for various platforms and applications) will also be taken into consideration by NIST.

4.C Algorithm and Implementation Characteristics

i. *Flexibility:* Candidate algorithms with greater flexibility will meet the needs of more users than less flexible algorithms, and therefore, are preferable. However, some extremes of functionality are of little practical use (e.g., extremely short message digest lengths)—for those cases, preference will not be given.

Some examples of ''flexibility'' may include (but are not limited to) the following:

a. The algorithm has a tunable parameter which allows the selection of a range of possible security/performance tradeoffs.

b. The algorithm can be implemented securely and efficiently on a wide variety of platforms, including constrained environments, such as smart cards.

c. Implementations of the algorithm can be parallelized to achieve higher performance efficiency.

ii. *Simplicity:* A candidate algorithm will be judged according to its relative design simplicity.

5. Initial Planning for the First SHA–3 Candidate Conference

An open public conference will be held shortly after the end of the submission period, at which the submitter of each complete and proper submission package will be invited to publicly discuss and explain their candidate algorithm. The documentation for these candidate algorithms will be made available at the Conference. Details of the conference will be posted at *http://www.nist.gov/hash-competition*.

6. Plans for the Candidate Evaluation Process

NIST plans to form an internal selection panel composed of NIST employees for the technical evaluations of the candidate algorithms. This panel will analyze the submitted algorithms, review public comments that are received in response to the posting of the ''complete and proper'' submissions, and all presentations, discussions and technical papers presented at the SHA–3 Candidate Conferences, as well as other pertinent papers and presentations made at other cryptographic research conferences and workshops. NIST will issue a report on each SHA–3 Candidate Conference, make a final selection and document the technical rationale for that selection in a final report, as NIST did in the selection of AES. The following is an overview of the envisioned SHA–3 candidate review process.

6.A Overview

Following the close of the call for candidate algorithm submission packages, NIST will review the received packages to determine which are ''complete and proper,'' as described in sections 2 and 3 of this notice. NIST will post all ''complete and proper'' submissions at *http://www.nist.gov/hash-competition* for public inspection. To help inform the public, the First SHA–3 Candidate Conference will be held at the start of the public comment process to allow submitters to publicly explain and answer questions regarding their submissions.

Round 1 will consist of a twelve-month public review of the first round candidate algorithms. During the Round 1 public review, NIST intends to evaluate the candidate algorithms as outlined in Section 6.B. NIST will review the public evaluations of the candidate algorithms' cryptographic strengths and weaknesses, and will use these to narrow the candidate pool for more careful study and analysis during Round 2.

Because of limited resources, and also to avoid moving evaluation targets (i.e., modifying the submitted algorithms undergoing public review), NIST will NOT accept modifications to the submitted algorithms during Round 1.

For informational and planning purposes, near the end of the Round 1 public evaluation process, NIST intends to hold the Second SHA–3 Candidate Conference. Its purpose will be to publicly discuss the SHA–3 candidate algorithms, and to provide NIST with information for narrowing the field of algorithms to be considered for SHA–3.

NIST plans to narrow the field of candidates to approximately five candidate algorithms for further analysis during Round 2, based upon its own analysis, public comments, and all other available information. It is envisioned that this narrowing will be done primarily on security, efficiency, and intellectual property considerations. For those candidate algorithms not selected for Round 2, the rights to use the algorithms will be returned to their respective submitters.

Before the start of the Round 2 evaluation period, the submitters of the Round 2 candidate algorithms will have the option of providing updated optimized implementations for use during the second phase of evaluation. During the course of the Round 1 evaluations, it is conceivable that some small deficiencies may be identified in even some of the most promising candidates. Therefore, for the Round 2 evaluations, small modifications to the submitted algorithms will be permitted for either security or efficiency purposes. Submitters may submit minor changes (no substantial redesigns), along with a supporting explanation/justification that must be received by NIST prior to the beginning of Round 2. (Submitters will be notified by NIST of the exact deadline.) NIST will determine whether or not the proposed modification would significantly affect the design of the algorithm, requiring a major re-evaluation; if such is the case, the modification will not be accepted. If modifications are submitted, new reference and optimized implementations and written descriptions shall be provided by the start of Round 2. This will allow a public review of the modified algorithms during the entire course of the Round 2 evaluation.

Note: All proposed changes for Round 2 must be proposed by the submitter; no proposed changes (to the algorithm or implementations) will be accepted from a third party.

Round 2 will consist of a twelve to fifteen month public review of the Round 2 candidate algorithms. During the public review, NIST will evaluate the candidate algorithms as outlined in the two sections below. After the end of the public review period, NIST intends to hold the Third SHA–3 Candidate Conference. (The exact date is to be scheduled.)

Following the Third SHA–3 Candidate Conference, NIST will select the algorithm(s) for SHA–3. The selected algorithm(s) will be incorporated into a draft FIPS, which will be announced in the **Federal Register** for public comment.

It should be noted that this schedule for the SHA–3 development is somewhat tentative, depending upon the type, quantity, and quality of the submissions. Specific conference dates and public comment periods will be announced at appropriate times in the future.

6.B Round 1 Technical Evaluation

NIST will invite public comments on all complete and proper submissions. NIST's Round 1 analysis is intended, at a minimum, to be performed as follows:

i. *Correctness check:* The KAT and MCT values included with the submission will be used to test the correctness of the reference and optimized implementations, once they are compiled. (It is more likely that NIST will perform this check of the reference code—and possibly the optimized code as well—even before accepting the submission package as ''complete and proper.'')

ii. *Efficiency testing:* Using the submitted optimized implementations, NIST intends to perform various computational efficiency tests, including the calculation of the time required to compute message digests for various length messages.

iii. *Other testing:* Other features of the candidate algorithms may be examined by NIST.

Platform and Compilers

The above tests will initially be performed by NIST with the following tools, at a minimum.

i. *NIST Reference Platform:* Wintel personal computer, with an Intel Core 2 Duo Processor, 2.4GHz clock speed, 2GB RAM, running Windows Vista Ultimate 32-bit (x86) and 64-bit (x64) Edition.

ii. *Compiler* (Note that the selection of this compiler is for use by NIST in Rounds 1 and 2, and does not constitute a direct or implied endorsement by NIST.): The ANSI C compiler in the Microsoft Visual Studio 2005 Professional Edition.

At a minimum, NIST intends to perform an efficiency analysis on the reference platform; however, NIST invites the public to conduct similar tests and compare results on additional platforms (e.g., 8-bit processors, Digital Signal Processors, dedicated CMOS, etc.).

Note: Any changes to the intended platform/compiler will be noted on *http://www.nist.gov/hash-competition.*

6.C Round 2 Technical Evaluation

At the end of the Round 1 technical evaluation and the Second SHA–3 Candidate Conference, NIST intends to narrow the field of candidate algorithms to approximately five candidates, in order to focus the remaining efforts of both NIST and the public. NIST intends to perform its own analysis of the submissions, and make that information publicly available. NIST's Round 2 analysis will, at a minimum, be performed as follows.

Note: The same platform and compilers from Round 1 will be used for Round 2 unless indicated on *http://www.nist.gov/hash-competition.*

i. *Message digest sizes:* Round 2 testing by NIST will be performed on the required message digest sizes as specified in section 3. Note: If the submitter chooses to submit updated optimized implementations prior to the beginning of Round 2, then some of the tests performed in Round 1 may be performed again using the new optimized implementations. This will be done to obtain updated measurements.

ii. *Efficiency testing:* Using the submitted optimized implementations, NIST intends to perform various computational efficiency tests for the minimum message digest sizes specified in section 3, including the calculation of the time required to compute message digests for various length messages.

NIST welcomes comments regarding the efficiency of the candidate algorithms when implemented in hardware. NIST may specify the finalist algorithms using a Hardware Description Language, to compare the estimated hardware efficiency of the candidate algorithms.

NIST may perform efficiency testing using additional platforms. NIST welcomes public input regarding efficiency testing on additional platforms.

iii. *Other testing:* Other features of the candidate algorithms may be examined by NIST. If appropriate, analyses from the Second SHA–3 Candidate Conference and the public evaluation during Round 1 may warrant the testing of specific features.

7. Miscellaneous

This section is intended to address some of the questions/comments raised in the review of the draft evaluation criteria.

- When evaluating algorithms, NIST will make every effort to obtain public input and will encourage the review of the candidate algorithms by outside organizations; however, the final decision as to which algorithm(s) will be selected for SHA–3 is the responsibility of NIST.
- NIST intends to develop a validation program for hash algorithm conformance testing, with the goal of having testing available by the time SHA–3 is incorporated into the revised Secure Hash Standard.
- NIST does NOT have a fixed timetable for the completion of the hash function competition. NIST reserves the right to extend the length of the technical review period for each round. If necessary, NIST may also insert additional rounds of such technical evaluations.
- NIST does not intend to select a wholly distinct algorithm for each of the minimally required message digest sizes. It is strongly recommended that no submission be so constructed.
- NIST will not target a specific application or platform for implementing the candidate hash algorithms, as the evaluation of candidate algorithms takes place. One factor that will be taken into consideration for each candidate algorithm is its flexibility—the ability to implement the algorithm securely and efficiently on a wide variety of platforms and applications (see Section 4.C).
- Since SHA–3 is intended to augment the existing NIST-approved hash algorithm toolkit, which includes the SHA–2 family of hash functions, NIST does not intend to select an additional ''backup'' hash algorithm for SHA–3. If circumstances arise (*e.g.*, a discovery of a significant security flaw) that could not be satisfactorily addressed by modifying the selected SHA–3 algorithm, NIST would likely consider the other finalist algorithms. If a significant period of time has elapsed since the hash algorithm selection, NIST would likely examine other algorithms that may have been developed in the intervening period.
- Exportability decisions regarding submissions and, eventually, products implementing the selected SHA–3 algorithm(s) will be made by the appropriate U.S. Government regulatory authorities. NIST is a non-regulatory agency of the U.S. Department of Commerce.
- If no appropriate algorithms are submitted in response to this call, NIST expressly reserves the right to cease this process and examine other possible courses of action.
- Submitters are strongly encouraged to submit only one algorithm each (presumably the one in which the submitter has the greatest confidence). The submission of similar, yet distinct, algorithms by the same submitter may delay the public evaluation process and may well raise public questions as to the submitter's level of confidence in his/her candidates.
- For conference and resource allocation planning purposes, it would be appreciated if those planning to submit candidates could notify the individuals listed in the **FOR FURTHER INFORMATION CONTACT** Section as soon as possible.

Appreciation

NIST extends its appreciation to all submitters and those providing public comments during the SHA–3 development process.

Dated: October 29, 2007.

Richard F. Kayser,

Acting Deputy Director, NIST.

[FR Doc. E7–21581 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD70

North Pacific Fishery Management Council; Notice of Plan Team Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) groundfish plan teams will meet in Seattle.

DATES: November 13–16, 2007. The meetings will begin at 9 a.m. on Tuesday, November 13, and continue through Friday November 16.

ADDRESSES: Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Observer Training Room (GOA Plan Team) and Traynor Room (BS/AI Plan Team), Seattle, Washington.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, NPFMC, 907–271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Principal business is to prepare and review the stock assessments for groundfish fisheries in the BSAI and GOA and recommend catch specifications for 2008/2009. Agenda posted on website at: *http://www.fakr.noaa.gov/npfmc/*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: October 29, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–21543 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 071023616–7617–01]

The Continued Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System: Midterm Review of the Joint Project Agreement

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commence

ACTION: Notice of Inquiry

SUMMARY: The United States Department of Commerce's National Telecommunications and Information Administration (NTIA) seeks comments on the continued transition to the private sector of the technical coordination and management of the Internet's domain name and addressing system (DNS). NTIA and the Internet Corporation for Assigned Names and Numbers (ICANN) signed a Joint Project Agreement (JPA) on September 29, 2006. It called for a midpoint review of ICANN's progress towards becoming a more stable organization with greater transparency and accountability in its procedures and decision making. The Department of Commerce seeks comment regarding the progress achieved on the Responsibilities identified in the JPA.

DATES: Comments are due on or before February 15, 2008.

ADDRESSES: Written comments may be submitted by mail to Suzanne R. Sene, Office of International Affairs, National Telecommunications and Information Administration, 1401 Constitution Avenue, N.W., Room 4701, Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to JPAMidTermReview@ntia.doc.gov. Comments provided via electronic mail should also be submitted in one or more of the formats specified above. Comments will be posted to NTIA's website at http://www.ntia.doc.gov/ntiahome/domainname/jpamidtermreview.html.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact: Suzanne R. Sene, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4701, Washington, DC 20230; telephone: (202) 482–3167; or email: ssene@ntia.doc.gov Please direct media inquiries to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: A July 1, 1997 Executive Memorandum directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.[1] In order to fulfill this Presidential directive, the Department of Commerce in June 1998, issued a statement of policy on the privatization of the Internet Domain Name System (DNS), known as the *DNS White Paper*.[2] This document articulated four primary functions for global DNS coordination and management:

1. To set policy for and direct the allocation of IP number blocks;

2. To oversee the operation of the Internet root server system;

3. To oversee policy for determining the circumstances under which new top level domains (TLDs) would be added to the root server system; and

4. To coordinate the assignment of other technical protocol parameters as needed to maintain universal connectivity on the Internet.

In the *DNS White Paper*, the Department of Commerce concluded that these functions were relevant to the state of the DNS and should be primarily performed through private sector management. To this end, the Department of Commerce stated that it was prepared to enter into agreement with a new not-for-profit corporation formed by private sector Internet stakeholders. Private sector interests formed the Internet Corporation for Assigned Names and Numbers (ICANN) for this purpose. In the fall of 1998, the Department of Commerce entered into a Memorandum of Understanding (MOU) with ICANN, a California non-profit corporation, to transition technical DNS

[1] Memorandum on Electronic Commerce, 2 Pub. Papers 898 (July 1, 1997).

[2] Management of Internet Names and Addresses, 63 Fed. Reg. 31,741 (June 10, 1998).

coordination and management functions to the private sector.[3]

On June 30, 2005 NTIA released the *U.S. Principles on the Internet's Domain Name and Addressing System*, which state: the United States Government intends to preserve the security and stability of the DNS by maintaining its historic role in authorizing changes or modifications to the authoritative root zone file; governments have legitimate interest in the management of their country code top level domains (ccTLD); ICANN is the appropriate technical manager of the Internet's DNS; and dialogue related to Internet governance should continue in relevant multiple fora.[4]

On May 23, 2006, NTIA issued a Notice of Inquiry and announced a Public Meeting on *The Continued Transition of the Technical Coordination and Management of the Internet Domain Name and Addressing System*.[5] The public consultation resulted in over 700 contributions from individuals, private corporations, trade associations, non-governmental entities and foreign governments. It showed broad support for continuing the transition of the coordination of the technical management of the DNS to the private sector and the continued involvement of the DOC in this transition. On September 29, 2006, NTIA and ICANN signed a Joint Project Agreement (JPA) extending the current Memorandum of Understanding between the Department and ICANN. The JPA called for a midpoint review of ICANN's progress towards becoming a more stable organization with greater transparency and accountability in its procedures and decision making.

REQUEST FOR COMMENT:

Given the requirement of a midterm review in the JPA, NTIA seeks comments on the progress achieved on the Responsibilities included in the JPA.

The questions below are intended to assist in identifying the issues and should not be construed as a limitation on comments that may be submitted. When references are made to studies, research, and other empirical data that are not widely published, please provide copies of the referenced materials with the submitted comments.

1. In the JPA, ICANN agreed to undertake the following with respect to security and stability: ''ICANN shall coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.''[6] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

2. In the JPA, ICANN agreed to undertake the following with respect to transparency: ''ICANN shall continue to develop, test and improve processes and procedures to encourage improved transparency, accessibility, efficiency, and timeliness in the consideration and adoption of policies related to technical coordination of the Internet DNS, and funding for ICANN operations. ICANN will innovate and aspire to be a leader in the area of transparency for organizations involved in private sector management.''[7] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

3. In the JPA, ICANN agreed to undertake the following with respect to accountability: ''ICANN shall continue to develop, test, maintain, and improve on accountability mechanisms to be responsive to global Internet stakeholders in the consideration and adoption of policies related to the technical coordination of the Internet DNS, including continuing to improve openness and accessibility for enhanced participation in ICANN's bottom-up participatory policy development processes.''[8] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

4. In the JPA, ICANN agreed to undertake the following with respect to root server security and relationships: ''ICANN shall continue to coordinate with the operators of root name servers and other appropriate experts with respect to the operational and security matters, both physical and network, relating to the secure and stable coordination of the root zone; ensure appropriate contingency planning; maintain clear processes in root zone changes. ICANN will work to formalize relationships with root name server operators.''[9] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

5. In the JPA, ICANN agreed to undertake the following with respect to TLD management: ''ICANN shall maintain and build on processes to ensure that competition, consumer interests, and Internet DNS stability and security issues are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs and the introduction of IDNs. ICANN will continue to develop its policy development processes, and will further develop processes for taking into account recommendations from ICANN's advisory committees and supporting organizations and other relevant expert advisory panels and organizations. ICANN shall continue to enforce existing policy relating to WHOIS, such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing and administrative contact information. ICANN shall continue its efforts to achieve stable agreements with country-code top-level domain (ccTLD) operators.''[10] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

6. In the JPA, ICANN agreed to undertake the following with respect to the multi-stakeholder model: ''ICANN shall maintain and improve multi-stakeholder model and the global participation of all stakeholders, including conducting reviews of its existing advisory committees and supporting organizations, and will continue to further the effectiveness of the bottom-up policy development processes. ICANN will strive to increase engagement with the Private Sector by

[3] Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers (November 25, 1998), available at http://www.ntia.doc.gov/ntiahome/domainname/icann-memorandum.htm.

[4] U.S. Department of Commerce, U.S. Principles on the Internet's Domain Name and Addressing System (June 30, 2005), http://www.ntia.doc.gov/ntiahome/domainname/usdnsprinciples_06302005.htm.

[5] U.S. Department of Commerce, *Notice of Inquiry, Notice of Public Meeting: The Continued Transition of the Technical Coordination and Management of the Internet Domain Name and Addressing System to the private sector*. http://www.ntia.doc.gov/ntiahome/domainname/dnstransition.html.

[6] See JPA Annex A, ¶ 1.

[7] Id at ¶ 2.

[8] Id at ¶ 3.

[9] Id at ¶ 4.

[10] Id at ¶ 5.

developing additional mechanisms for involvement of those affected by the ICANN policies.''[11] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

7. In the JPA, ICANN agreed to undertake the following with respect to the role of governments: ''ICANN shall work with the Government Advisory Committee Members to review the GAC's role within ICANN so as to facilitate effective consideration of GAC advice on the public policy aspects of the technical coordination of the Internet.''[12] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

8. In the JPA, ICANN agreed to undertake the following with respect to IP addressing: ''ICANN shall continue to work collaboratively on a global and regional level so as to incorporate Regional Internet Registries' policy-making activities into the ICANN processes while allowing them to continue their technical work. ICANN shall continue to maintain legal agreements with the RIRs (and such other appropriate organizations) reflecting this work.''[13] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

9. In the JPA, ICANN agreed to undertake the following with respect to corporate responsibility: ''ICANN shall maintain excellence and efficiency in operations, including good governance, organizational measures to maintain stable, international private sector organization, and shall maintain relevant technical and business experience for members of the Board of Directors, executive management, and staff. ICANN will implement appropriate mechanisms that foster participation in ICANN by global Internet stakeholders, such as providing educational services and fostering information sharing for constituents and promoting best practices among industry segments.''[14] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

10. In the JPA, ICANN agreed to undertake the following with respect to its corporate administrative structure: ''ICANN shall conduct a review of, and shall make necessary changes in, corporate administrative structure to ensure stability, including devoting adequate resources to contract enforcement, taking into account organizational and corporate governance ''best practices.''[15] What progress do you believe ICANN has achieved with regard to this Responsibility since October 1, 2006? If you believe that progress has been made, please explain how and why? Could more be done by ICANN in this area?

Dated: October 30, 2007.

John M. R. Kneuer,

Assistant Secretary for Communications and Information.

[FR Doc. E7–21626 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–60–S

[11] Id at ¶ 6.

[12] Id at ¶ 7.

[13] Id at ¶ 8.

[14] Id at ¶ 9.

[15] Id at ¶ 10.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

October 29, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for knit pile fabric made from acrylic staple fiber.

SUMMARY: On October 29, 2007, the Chairman of CITA received a request from Monterey Mills, alleging that certain acrylic staple fibers, not carded, combed or otherwise processed for spinning, classified under subheading 5503.30 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the North American Free Trade Agreement (NAFTA) rule of origin for knit pile fabrics, classified under HTSUS subheading 6001.10, should be modified to allow the use of non-North American acrylic staple fiber. The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether acrylic staple fiber of HTSUS subheading 5503.30 can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **December 3, 2007** to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. See Section 202(q) of the NAFTA Implementation Act. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. NAFTA Implementation Act, SAA, H. Doc. 103-159, Vol. 1, at 491 (1993). The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. SAA at 491. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are

necessary to implement an agreement with one or more NAFTA country on such a modification. See section 202(q) of the NAFTA Implementation Act.

On October 29, 2007, the Chairman of CITA received a request from Monterey Mills, alleging that certain acrylic staple fibers, not carded, combed or otherwise processed for spinning, classified under subheading 5503.30 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the North American Free Trade Agreement (NAFTA) rule of origin for knit pile fabrics, classified under HTSUS subheading 6001.10, should be modified to allow the use of non-North American acrylic staple fiber.

CITA is soliciting public comments regarding this request, particularly with respect to whether the acrylic staple fiber described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than **December 3, 2007**. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these acrylic staple fibers can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces fiber that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–21627 Filed 11–1–07; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting is announced:

Name of Committee: Defense Health Board (DHB).

Dates: December 11 and 12, 2007.

Times: December 11, 2007.

8 a.m.–12:15 p.m. (Open Session).

1:30 p.m.–4:15 p.m. (Open Session).

December 12, 2007.

8:30 a.m.–12 p.m. (Open Session).

Place of Meeting: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

Purpose of the Meeting: The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda: The Board will deliberate the findings and recommendations of the Task Force on the Future of Military Health Care and receive an update on the Department's efforts to reengineer the Disability Evaluation Program. The Board will receive reports from the Psychological Health and Traumatic Brain Injury External Advisory Subcommittees. The Board will also deliberate recommendations regarding Emergency Blood Transfusion Safety and discuss DoD's convalescent plasma treatment guidelines development. Pandemic influenza preparedness and Chlamydia infection control will also be discussed.

On December 12, 2007, the board will hold a short preparatory session before the beginning of the open meeting and an administrative session after the open meeting is adjourned. The preparatory and administrative sessions are closed to the public.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting from 8 a.m. to 4:15 p.m. on December 11, 2007 and from 8:30 a.m. to 12 p.m. on December 12, 2007 is open to the public. Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuls desiring to submit a written statement may do so through the Board's Designated Federal Officer at the address detailed below at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

FOR FURTHER INFORMATION CONTACT: Colonel Roger L. Gibson, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Room 810, Falls Church, Virginia 22041–3206, (703) 681–3279, Ext 123, Fax: (703–681–3321, (*roger.gibson@ha.ods.mil*). Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb*. The public is encouraged to register for the meeting. Written statements may be mailed to the above address, e-mailed to *dhb@ha.osd.mil* of faxed to (703) 681–3321.

Dated: October 29, 2007.

L.M. Bynum,

Liaison Officer, Department of Defense.

[FR Doc. 07–5455 Filed 11–1–07; 8:45 am]

BILLING CODE 5501–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Assistant Secretary of Defense (Health Affairs), Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (U.S.C. 522b, as amended) the Department of Defense announces the following Federal Advisory Committee Meeting.

Name of Committee: Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

Date of Meeting: Thursday, January 10, 2008.

Location: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

Time: 8 a.m. to 4 p.m.

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics (P&T) Committee regarding the Uniform Formulary.

Meeting Agenda: Sign-In; Welcome and Opening Remarks; Opportunity for Public Citizen Comments; Scheduled Therapeutic Class Reviews—Targeted Immunomodulatory Biologics (TIBs), BPH Alpha Blockers (BPH-ABs), Adrenergic Blocking Agents (ABAs) and Designated Newly Approved Drugs; Panel Discussions and Vote, and comments following each therapeutic class review.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102.3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*http://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discused at a planned meeting then these statements must be submitted no later than five (5) business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set will set aside one (1) hour for individual or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice. Additionally, they will be afforded the opportunity to address the Panel. Registration for addressing the Panel in on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than five (5) minutes to present their comments, and at the end of the one (1) hour time period no further public comments will be accepted.

FOR FURTHER INFORMATION CONTACT: Major Travis Watson, Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, Skyline 5, Suite 810–5111 Leesburg Pike, Falls Church, Virginia 22041–3206, Telephone: (703) 681–2890—Fax: (703) 681–1940, E-mail Address: *baprequests@tma.osd.mil.*

Dated: October 26, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 07–5456 Filed 11–1–07; 8:45 am]

BILLING CODE 5001–06–M

ELECTION ASSISTANCE COMMISSION

[Notice 2007–42]

Consideration of Administrative Transfer of national Voter Registration Act Regulations

AGENCY: Election Assistance Commission.

ACTION: Notice: Request for Public Comment.

SUMMARY: The Help America Vote Act of 2002 (Pub. L. 107–252, 116 Stat. 1727, 42 U.S.C. 15532) transferred authority to promulgate regulations under the National Voter Registration Act of 1993 (NVRA) (Pub. L. 93–31, 197 Stat. 77, 42 U.S.C. 1973gg–1 *et. seq.* at 41 U.S.C. 1973gg–7(a)) from the Federal Election Commission (FEC) to the Election Assistance Commission (EAC). The EAC is presently considering the administrative transfer of NVRA regulations previously adopted and maintained by the FEC. These regulations are currently located at 11 CFR Part 8. In accordance with the Administrative Procedures Act (APA), this administrative transfer of the regulations would make no substantive changes to the FEC regulations and would be made without public comment. The only changes made would be technical, such as the address and contact information for the responsible agency. Following this administrative transfer of the regulations, the EAC would begin efforts to substantively amend the rules. This rulemaking process would include substantial public involvement, including public notice and comment pursuant to the APA. The EAC currently seeks public comment on whether the agency should administratively transfer regulations previously adopted and maintained by the FEC regarding the NVRA, currently located at 11 CFR Part 8, and then substantively amend those rules. Please note that the EAC does not seek substantive comment on the content of the existing regulations or potential modifications to the regulations.

DATES: Comments must be received on or before 4 p.m. on December 3, 2007.

ADDRESSES: Comments must be submitted in either electronic or written form. Comments may be submitted online at *http://www.eac.gov.* Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Written comments should be sent to: NVRA Comments, Election Administration Support Division, U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. Edgardo Cortés, Election Research Specialist, (202) 566–3100 or toll-free (866) 747–1471.

SUPPLEMENTARY INFORMATION: The National Voter Registration Act of 1993 (NVRA), Pub. L. 93–31, 197 Stat. 77, 42 U.S.C. 1973gg–1 *et. seq*, at 42 U.S.C. 1973gg–7(a) required the Federal Election Commission (FEC) to issue regulations to develop a national mail voter registration form for elections to Federal office, and to submit to Congress no later than June 30 of each odd-numbered year (beginning June 30, 1995) a report that assesses the impact of the NVRA and recommends improvements in Federal and State procedures, forms, and other matters affected by the NVRA. The FEC published an Advance Notice of

Proposed Rulemaking in connection with the NVRA rulemaking on September 30, 1993 (58 FR 51132), and Notice of Proposed Rulemaking on March 10, 1994 (59 FR 11211). Following a public notice and comment rulemaking, the FEC issued rules implementing these requirements on June 23, 1994. 59 FR 32323.

Section 802 of the Help America Vote Act of 2002 (HAVA), Pub. L. 107–252, 116 Stat. 1727, 42 U.S.C. 15532, transferred the FEC's responsibilities under the NVRA to the Election Assistance Commission (EAC) but it did not transfer the FEC's previously adopted regulations. In order to carry out the functions listed in section 9(a) of the NVRA [42 U.S.C. 1973gg–7(a)], the EAC must promulgate regulations. The EAC currently seeks public comment on whether the agency should administratively transfer regulations previously adopted and maintained by the FEC regarding the NVRA. The administrative transfer would move the existing FEC regulations (11 CFR Part 8) to the EAC's Code of Federal Regulations site and only make technical changes to the mailing address and contact information for the agency. EAC believes that good cause exists for adopting the FEC rules as final EAC rules without public notice and comment under 5 U.S.C. 553 because this rule only reflects an administrative transfer of functions required by HAVA. No substantive changes will be made to the rules, which have already been subject to public notice and comment. Similarly, because this final rule is a recodification of existing regulations, it would not be subject to the effective date limitation of 5 U.S.C. 5539d). After the proposed administrative transfer of the regulations, the EAC would take steps to substantively amend the rules, which would significantly involve the public and include an opportunity for public notice and comment pursuant to the Administrative Procedures Act (APA).

Again, the EAC is seeking comment on its proposed plan to first administratively transfer and then substantively amend the NVRA rules located at 11 CFR Part 8. At this time, the EAC does not seek comment on the substance of the regulations. As such, this notice and request for public comment is not required by or made pursuant to the APA.

After review of the public comments received pursuant to this notice, the EAC will decide whether to administratively transfer the regulations and then substantively modify them, as described above. If this process is not adopted, the EAC will alternatively initiate a rule making process under 5 U.S.C. 553 independent of the FEC rules. In either scenario, EAC will follow all the rulemaking requirements of the APA, which allows for extensive public comment and transparency in the regulatory process.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–5447 Filed 10–30–07; 9:30 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

September 20, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2157–010; ER03–9–009.

Applicants: Western Resources, Inc.; Kansas Gas and Electric Company.

Description: Westar Energy, Inc and Kansas Gas and Electric Co submits Fifth Revised Sheet 1 et al to FERC Electric Tariff, Third Revised Volume 6, to be effective 9/18/07.

Filed Date: 09/17/2007.

Accession Number: 20070919–0065.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 9, 2007.

Docket Numbers: ER99–1757–013.

Applicants: The Empire District Electric Company.

Description: The Empire District Electric Co submits Fifth Revised Sheet 1 et al to FERC Electric Tariff, First Revised Volume 3, to be effective 9/18/07.

Filed Date: 09/17/2007.

Accession Number: 20070919–0059.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 9, 2007.

Docket Numbers: ER06–819–006.

Applicants: Consolidated Edison Energy Massachusetts, Inc. and Consolidated Edison Energy, Inc.

Description: ERRATA to Correct Compliance Filing of Refund Report of Consolidated Edison Energy Massachusetts, Inc., et al.

Filed Date: 09/14/2007.

Accession Number: 20070914–5012.

Comment Date: 5 p.m. Eastern Time on Friday, October 5, 2007.

Docket Numbers: ER07–1355–001.

Applicants: Avista Energy, Inc.

Description: Avista Energy, Inc submits an errata to the notice of Cancellation of Market-Base Rate Schedule filed 9/7/07.

Filed Date: 09/17/2007.

Accession Number: 20070919–0058.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 9, 2007.

Docket Numbers: ER07–1371–000.

Applicants: Sierra Pacific Power Company; Nevada Power Company.

Description: Sierra Pacific Power Co and Nevada Power Co submits a change in the rates for transmission services under the SPR Operating Companies' open-access transmission tariff, FERC Third Revised Volume 1.

Filed Date: 09/14/2007.

Accession Number: 20070918–0167.

Comment Date: 5 p.m. Eastern Time on Friday, October 5, 2007.

Docket Numbers: ER07–1373–000.

Applicants: California Independent System Operator Corp.

Description: California Independent System Operator Corp submits an unexecuted Operating Agreement with PacifiCorp.

Filed Date: 09/14/2007.

Accession Number: 20070918–0136.

Comment Date: 5 p.m. Eastern Time on Friday, October 5, 2007.

Docket Numbers: ER07–1375–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an unexecuted Large Generator Interconnection Agreement with Interstate Power and Light Co et al.

Filed Date: 09/14/2007.

Accession Number: 20070918–0138.

Comment Date: 5 p.m. Eastern Time on Friday, October 5, 2007.

Docket Numbers: ER07–1376–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits an informational filing re the Joint Operating Agreement executed on 5/20/07 et al.

Filed Date: 09/14/2007.

Accession Number: 20070918–0139.

Comment Date: 5 p.m. Eastern Time on Friday, October 5, 2007.

Docket Numbers: ER07–1382–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits a long-term firm Transmission Service Agreement with Cargill Power Markets, LLC.

Filed Date: 09/18/2007.

Accession Number: 20070919–0060.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 9, 2007.

Docket Numbers: ER07–1383–000; ER07–1384–000.

Applicants: Duke Energy Shared Services, Inc.

Description: Duke Energy Shared Services, Inc submits a notice of cancellation.

Filed Date: 09/18/2007.

Accession Number: 20070919–0061.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 9, 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. E7–21645 Filed 11–1–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0038; FRL–8490–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Control Technology Determinations from Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j); EPA ICR No. 1648.06, OMB Control No. 2060–0266

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 EPA is planning to submit a request to reinstate an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The existing ICR expired on May 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 2, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0038, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2002–0038.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2002–0038.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket and Information Center, 1200 Pennsylvania Ave., NW., Mail Code 2822T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2002–0038.
- *Hand Delivery:* U.S. Environmental Protection Agency Docket Center, Public Reading Room, EPA West Building Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2002–0038. 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–HQ–OAR–2002–0038. 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. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2002–0038, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. 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 , 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.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policy and Programs Division, Program Design Group, D205–02, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5262, e-mail *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OAR–2002–0038. The docket

is available for online viewing at *www.regulations.gov,* or in person viewing at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) or examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare my Comments for EPA?

You may find the following suggestions helpful for preparing comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. 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.

To What Information Collection Activity or ICR Does this Apply?

Affected entities: Entities potentially affected by this action are major sources of hazardous air pollutants (HAPs) in the following source categories: Polyvinyl chloride and copolymers production; brick and structural clay products manufacturing; clay ceramics manufacturing; and industrial, commercial, and institutional boilers and process heaters. A major source is one that has the potential to emit more than 10 tons per year of any HAP, 25 tons per year for the total of all HAP, or amounts exceeding any lesser quantity cutoff established pursuant to § 112(a)(1) of the CAA.

Title: Information Collection Request for Requirements for Control Technology Determinations from Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j).

ICR numbers: EPA ICR No. 1648.06, OMB Control No. 2060–0266.

ICR status: The previous ICR expired on May 31, 2005. 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 regulation is consolidated in 40 CFR part 9.

Abstract: The regulations governing section 112(j) case-by-case MACT determinations were promulgated on May 20, 1994 (59 FR 26449), and amended last on May 30, 2003 (68 FR 32586).

The affected entities of this ICR are major sources of polyvinyl chloride and copolymers production; brick and structural clay products manufacturing; clay ceramics manufacturing; and industrial, commercial, and institutional boilers and process heaters. Previous MACT standards for these source categories have been vacated by the U.S. Court of Appeals for the District of Columbia Circuit. Sources previously subject or that would have been subject to those MACT standards would be those entities affected by this ICR.

Owners and operators of affected sources must submit title V permit applications or amendments and comply with terms and conditions established under those permits or modifications related to case-by-case MACT. The terms and conditions can include performance testing, monitoring, recordkeeping, and reporting. Because the time it will take to develop and amend permits and time allowed for compliance with the case-by-case MACT for existing sources will exceed the term of this ICR, it is not anticipated that this ICR will cover those activities. We anticipate that this ICR will cover any activities involving the development and submittal of Part 1 and Part 2 permit applications, the permitting authority's development of the permit terms and conditions and permit review and approval.

Burden Statement: 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 to; 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.

The ICR Supporting Statement provides an explanation of the Agency's estimate, that is only briefly summarized here:

Estimated total number of potential respondents: 20,000.

Frequency of response: One time.

Estimated total average number of responses for each respondent: One title V application or amendment (Part 1 and Part 2 application combined).

Estimated total annual burden hours: 1,127,333.

Estimated total annual costs: $65,636,200.

Are There Changes in the Estimates from the Last Approval?

The previous ICR covered only Part 1 applications. This ICR covers both Part 1 and Part 2 applications as well as the permitting authorities' review and approval of those applications, development of case-by-case MACT, public notice and comment, and issuance of the final permit. The burden between the previous ICR and this ICR are very significant primarily because they cover different activities.

What is the Next Step in the Process for this ICR?

EPA will consider any comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 29, 2007.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. E7–21608 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0038; FRL–8155–3]

The Cadmus Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to The Cadmus Group, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). The Cadmus Group, Inc. has been awarded multiple contracts to perform work for OPP, and access to this information will enable The Cadmus Group, Inc. to fulfill the obligations of the contract.

DATES: The Cadmus Group, Inc. will be given access to this information on or before November 9, 2007.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address: *croom.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, 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–2007–0038. 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 Drive, 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. Contractor Requirements

Under Contract No. EP–C–07–022, the contractor will review and evaluate the most recent toxicity, occurrence and exposure information for atrazine and triazines (simazine and propazine) and other pesticides in water to support health effect reviews under the Safe Drinking Water Act and the Clean Water Act. Access by The Cadmus Group Inc. to this information will enable the Office of Water to have increased support and use of the best available, peer reviewed science to support decisions and develop the analyses required under both the Safe Drinking Water Act and the Clean Water Act.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with The Cadmus Group, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, The Cadmus Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to The Cadmus Group, Inc. until the requirements in this document have been fully satisfied. Records of information provided to The Cadmus Group, Inc. will be maintained by EPA Project Officers for this contract. All information supplied to The Cadmus Group, Inc. by EPA for use in connection with this contract will be returned to EPA when The Cadmus Group, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: October 26, 2007.

Oscar Morales,

Acting Director, Office of Pesticide Programs.

[FR Doc. E7–21598 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6692–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

DRAFT EISs

EIS No. 20070286, ERP No. D–BLM–J65331–WY, Kemmerer Field Office Planning Area, Resource Management Plan, Implementation, Lincoln, Sweetwater and Uinta Counties, WY.

Summary: EPA expressed environmental concerns about impacts from cumulative emissions leading to visibility impairments and/or exceedances of air quality standards. EPA recommended broad implementation of air mitigation measures. Rating EC2.

EIS No. 20070295, ERP No. D–AFS–J39036–CO, Hunter Reservoir Enlargement Project, Reconstruction and Enlargement, Ute Water Conservancy District, U.S. Army COE section 404 Permit, Grand Mesa National Forest, Mesa County, CO.

Summary: EPA has identified the potential for significant adverse impacts to wetlands that would be environmentally unsatisfactory. Major issues include the limited range of alternatives for meeting the proposed action and lack of adequate alternative analysis, and adverse impacts to 32 acres of a fen/montane wetland complex, an aquatic resource of national importance. Rating EU3.

EIS No. 20070313, ERP No. D–NOA–E91019–00, Amendment 2 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan, To Implement Management Measures that Prevent Overfishing and Rebuild Overfished Stocks, Implementation, Exclusive Economic Zone (EEZ) of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20070339, ERP No. D–COE–K39110–GU, Apra Harbor Master Plan for Deep-Draft Wharf and Fill Improvements, Implementation, Piti, Guam.

Summary: EPA expressed environmental objections about significant impacts to the marine environment and coral reefs including the permanent loss of 29 acres of coral reef and impacts on up to 150 acres of marine habitat. EPA recommended evaluation of less damaging alternatives for the fill/creation of operational backlands and a comprehensive approach for compensatory mitigation. Rating EO2.

EIS No. 20070274, ERP No. DS–COE–D30005–MD, Atlantic Coast of Maryland Shoreline Protection Project, Proposed Dredging of Several New Offshore Shoals to Provide Sand for Borrow Sources from 2010 to 2044, Ocean City, Worcester County, MD.

Summary: EPA expressed environmental concerns about impacts to offshore shoals. Rating EC1.

FINAL EISs

EIS No. 20070381, ERP No. F–AFS–L65508–AK, Kenai Winter Access Project, Develop a Winter Access Management Plan for 2006/2007 Winter Season, Implementation, Seward Ranger District, Chugach National Forest, Located on the Kenai Peninsula in Southcentral, AK.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the action as proposed.

EIS No. 20070417, ERP No. F–FHW–C40337–DC, 11th Street Bridge Project, Anacostia Freeway I–295/DC 295, to the Southeast/Southwest Freeway (I–695) Improvements, Funding, NPDES Permit, US Army COE section 10 and 404 Permits, Washington, DC.

Summary: EPA does not object to the proposed project.

Dated: October 30, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–21612 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6692–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 10/22/2007 through 10/26/2007.

Pursuant to 40 CFR 1506.9.

EIS No. 20070452, Draft EIS, BLM, CO, Canyons of the Ancients National Monument Resource Management Plan, To Address Future Management Options for Approximately 165.00 Acres of Land, Dolores and Montezuma Counties, CO, Comment Period Ends: 01/25/2008, Contact: Heather Muselow 970–882–5600.

EIS No. 20070453, Draft EIS, BLM, UT, Monticello Field Office Resource Management Plan, To Guide the Management of Public Land, Southern two-third of San Juan County and small portion on the Northern boundary within Grand County, UT, Comment Period Ends: 01/30/2008, Contact: Gary Torres 435–587–1524.

EIS No. 20070454, Draft EIS, BIA, WY, Riverton Dome coal Bed Natural Gas (CBNG) and Conventional Gas Development Project, Construction of Well Pads, Roads, Pipelines, and Production Facilities, Wind River Indian Reservation (WEIR), Fremont Count, WY, Comment Period Ends: 01/02/2008, Contact: Ray Nation 307–332–3718.

EIS No. 20070455, Draft EIS, SFW, CA, Coyote Spring Investment Multi species Conservation Plan, Issuing a 40-year Incidental Take Permit for Five Species, Clark and Lincoln Counties, CA, Comment Period Ends: 01/02/2008, Contact: Mary Grim 916–414–6464.

EIS No. 20070456, Final EIS, DOE, PA, Gilbert on Coal-to-Clean Fuels and Power Project, Construction and Operation a New Demonstration Plant, Preferred Alternative Selected, Schuylkill County, PA, Wait Period Ends: 12/03/2007, Contact: Janice L. Bell 1–866–576–8240.

EIS No. 20070457, Final EIS, UAF, MA, Final Recommendations and Associated Actions for the 104th Fighter Wing Massachusetts Air National Guard, Base Realignment and Closure, Implementation, Westfield-Barnes Airport, Westfield, MA, Wait Period Ends: 12/03/2007, Contact: Robert Dogan 301–836–8859.

EIS No. 20070458, Final EIS, FHW, CT, CT 82/85/11 Corridor Transportation Improvements, Selected Preferred Alternative, is a Modification of Alternative 4(E), Funding and COE Section 404 Permit, In the Towns of Salem, Montville, East Lyme and Waterford, CT, Wait Period Ends: 12/03/2007, Contact: Bradley D. Keazer 860–659–6703 Ext. 3009.

EIS No. 20070459, Final EIS, FRC, SC, Santee Cooper Hydroelectric Project

(FERC. No. 199), Relicensing for Existing 130-megawatt (MW), Santee and Cooper Rivers, Berkeley, Calhoun, Clarendon, Orangeburg and Sumter Counties, SC, Wait Period Ends: 12/03/2007, Contact: Monte Terhaar 202–502–6035.

EIS No. 20070460, Final EIS, FRC, WI, Guardian Expansion and Extension Project, Construction and Operation Natural Gas Pipeline Facilities, Jefferson, Dodge, Fond du Lac, Calument, Brown, Walworth, Outagamie Counties, WI, Wait Period Ends: 12/03/2007, Contact: Andy Black 1–866–208–3372.

EIS No. 20070461, Final EIS, IBR, 00, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, Implementation, Colorado River, CO and CA, Wait Period Ends: 12/03/2007, Contact: Nan Yoder 702–595–9851.

EIS No. 20070462, Final EIS, MMS, 00, Eastern Planning Area Outer Continental Shelf (OCS) Oil and Gas Lease Sale 224, Gulf of Mexico Offshore Marine Environment and Coastal Parshes/Counties of LA, MS, AL, and North Western Florida, Wait Period Ends: 12/03/2007, Contact: Dr. Sally Valdes 703–787–1707.

EIS No. 20070463, Draft EIS, CGD/MARAD, FL, Calypso Liquefied Natural Gas (LNG) Deepwater Port License Application, Proposes to Own, Construct, and Operate a Deepwater Port, Outer Continental Shelf (OCS) in the OCS NG 17–06 (Bahamas) Lease Area, 8 to 10 miles off the East Coast of Florida to the Northeast of Port Everglades, FL, Comment Period Ends: 12/17/2007, Contact: Mary Kate Jager 202–372–1454.

Amended Notices

EIS No. 20070385, Draft EIS, FHW, 00, Peace Bridge Expansion Project, Capacity Improvements to the Peace Bridge, Plazas and Connecting Roadways, U.S. Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits. City of Buffalo, Erie County, NY and Town of Fort Erie, Ontario, Canada, Comment Period Ends: 11/13/2007, Contact: Amy Jackson-Grove 518–431–4131.

Revision of Fr Notice Published 09/14/2007: Extending Comment Period from 10/29/2007 to 11/13/2007.

Dated: October 30, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–21590 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0588; FRL–8154–4]

Acrolein Human Health Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health risk assessment, and related documents for the pesticide acrolein, and opens a public comment period on these documents (Phase 3 of 6–Phase Process). The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for acrolein through a 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this process, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before January 2, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0588, 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–2007–0588. 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: Amaris Johnson, Special Review and

Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; fax number: (703) 308–7070; e-mail address: *johnson.amaris@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. 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. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessment and related documents for acrolein, an aldehyde, and soliciting public comment on risk management ideas or proposals. Acrolein is primarily used in irrigation canals and reservoirs to treat aquatic weeds, such as pondweed. Its secondary use is in oil fields, as a biocide to remove bacteria during petroleum production. EPA developed the human health risk assessment and risk characterization for acrolein as a part of its public process for making its pesticide reregistration eligibility decision. Through this program, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The ecological risk assessment for acrolein was posted in the docket for the Phase 3 public comment period on July 25, 2007. This comment period closed on September 23, 2007. The Agency intends to review the comments for both the ecological and human health risk assessments, revise the risk assessments if appropriate from comments received, and provide an additional public comment period on both the ecological and human health risk assessments for acrolein.

Acrolein is registered as a non-food use aquatic herbicide used primarily in irrigation canals. It is a non-specific biocide that treats aquatic weeds by breaking down their cell walls. Acrolein is formulated as a liquid, and is metered directly into irrigation canals or reservoirs.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's human health risk assessment for acrolein. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as residue data on root and tuber crops, air monitoring data, and residential bystander exposure and risk information, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for acrolein. Risks of concern associated with the use of acrolein include:

1. Exposure to workers during application periods, and

2. Bystanders during post-application periods.

In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to acrolein, compared to the general population.

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, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For acrolein the full, 6–Phase process with 2 comment periods and ample opportunity for public consultation seems appropriate in view of its large number of users in the Pacific Northwest, multiple incidents, complex issues, acute toxicity, and numerous affected stakeholders.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for acrolein. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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 23, 2007.

Steve Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–21438 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1060; FRL–8155–4]

Pesticide Inert Ingredients: Support Status of Revoked Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notice from various companies of their intention to submit data in order to support the reinstatement of a number of inert ingredient tolerance exemptions that were revoked because of insufficient data, revocations effective as of August 9, 2008, in a final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415). This notice identifies the tolerance exemptions that the companies indicate they will be supporting with the submission of data. The information in this notice is for informational purposes only and does not affect the previous revocations. Based on the review of the submitted data, EPA will conduct rulemaking to establish new tolerance exemptions where appropriate.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; fax number: (703) 605–0781; e-mail address: *leifer.kerry@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. 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–2007–1060. 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. Background on the Revocation of Pesticide Inert Ingredient Tolerance Exemptions on August 9, 2006

In a final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415) (FRL–8084–1), EPA revoked inert ingredient tolerance exemptions because insufficient data were available to the Agency to make the safety determination required by FFDCA section 408(c)(2). In making the FFDCA reassessment safety determination, EPA considered the validity, completeness, and reliability of the data that are available to the Agency [FFDCA section 408 (b)(2)(D)] and the available information concerning the special susceptibility of infants and children (including developmental effects from *in utero* exposure) [FFDCA section 408 (b)(2)(C)]. Data gaps existed for these inert ingredients in areas that were critical to reassessment. Without these data, the assessment of possible effects to infants and children could not be made. EPA concluded it had insufficient data to make the safety finding of FFDCA section 408(c)(2) and revoked the inert ingredient tolerance exemptions identified in the final rule under 40 CFR 180.910, 180.920, 180.930, and 180.940, with the revocations effective two years after the date of publication. The tolerance exemptions will expire on August 9, 2008.

B. What Information Is Provided In This Notice?

EPA has received communications from pesticide registrants and inert ingredient manufacturers expressing interest in supporting certain inert ingredient tolerance exemptions that were revoked in the final rule of August 9, 2008. EPA developed voluntary guidance describing how interested parties could support these revoked tolerance exemptions, including consultations with the Agency and how they can demonstrate support, including identifying test materials and providing evidence that a laboratory has been hired to conduct the study. The voluntary guidance document, entitled ''Guidance for Supporting the Inert Ingredients Subject to the Revocation Notice of August 9, 2006'', is available on EPA's website at *http://www.epa.gov/opprd001/inerts/*.

In the interest of keeping the stakeholders informed about activities that may impact these revoked tolerance exemptions, EPA is publishing in this notice the support status of each of the revoked tolerance exemptions by indicating whether the Agency has received a demonstration of support (such as described in the guidance document discussed above).

Be advised that the information provided in this notice does not guarantee or in any way bind the Agency to reinstate tolerance

exemptions, establish new tolerance exemptions, or grant extensions to expiring tolerance exemptions. EPA cannot guarantee that the parties will, in fact, submit any data at all. Additionally, it is possible that the data submitted to support a tolerance exemption may not support a safety finding under FFDCA section 408(c)(2). In these cases, the tolerance exemption will not be reinstated nor will a new one be established. The information being published here is designed simply to inform interested stakeholders about the tolerance exemptions for which the Agency has received a demonstration of support. EPA recommends that you contact the chemical suppliers to confirm their plans for supporting a tolerance exemption.

It is important to note that several parties have indicated that they may want to support only a portion of a tolerance exemption expression that includes a range of chemicals. At this time, EPA does not know exactly what range of chemicals within a tolerance exemption will eventually be supported by data. Until the data are submitted and reviewed, EPA will not know what portion, if any, of a current tolerance exemption can be reinstated. If the results of the data permit, a supported exemption may be reinstated in whole, or a new tolerance exemption may be established if only a part of a revoked exemption is supported by the data. Again, contact the chemical suppliers to confirm their plans for supporting a tolerance exemption. Unit III. of this document provides the tolerance exemptions the parties assert they are supporting.

III. Support Status of Revoked Tolerance Exemptions

The following provides the support status of each of the inert ingredient tolerance exemptions revoked because of insufficient data. The tolerance exemptions are presented below in the order they appeared in the final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415). The support status has been added to the end of each tolerance exemption expression. For example, under § 180.910, the entry for the tolerance exemption expression ''y. Sodium mono-, di-, and tributyl naphthalenesulfonates'' ends with ''(Demonstration of Support)'', which means that the EPA has received communication from a party that they intend to submit data supporting reinstatment of all or part of the tolerance exemption and the parties have taken measures to demonstrate their support to the Agency such as those described in the voluntary guidance document (discussed above). On the other hand, under § 180.910, the entry for the tolerance exemption expression ''v. Sodium lauryl glyceryl ether sulfonate'' ends with ''(No Demonstration of Support)'', which means the EPA has not received communication from a party concerning support of the exemption and/or has not received a sufficient demonstration of support. Tolerance exemptions that are not supported by the submission of adequate data will expire on August 9, 2008. If EPA determines that specific tolerance exemptions scheduled to expire are supported by adequate data, the Agency intends to conduct rulemaking to reinstate the exemptions or create new tolerance exemptions for the affected commodities. EPA recommends that you contact the chemical suppliers to confirm their plans for supporting a tolerance exemption.

Also, the final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415) revoked two inert ingredient tolerance exemptions that were inadvertently removed from the CFR some time ago but are considered to be an active tolerance exemptions under §§ 180.910 and 180.930. The support status of these tolerance exemptions is found at the end of §§ 180.910 and 180.930.

In addition to the revocation of tolerance exemptions for insufficient data, an administrative revocation was completed for seven redundant and incorrect tolerance exemptions under 40 CFR part 180 in the final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415). These tolerance exemptions were revoked on the date of publication of the final rule. These seven tolerance exemptions appear in the list below so as to maintain the original order of the list of tolerance exemptions as given in the final rule and facilitate the reader's ability to determine the support status of each of the tolerance exemptions revoked for insufficient data. The status of the seven exemptions is indicated as ''(Administrative Revocation is Complete)''.

Under § 180.910:

a. α-Alkyl (C_9-C_{18}-ω-hydroxypoly(oxyethylene) with poly(oxyethylene) content of 2-30 moles. (Demonstration of Support)

b. α-(*p*-Alkylphenyl)-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of alkylphenol (alkyl is a mixture of propylene tetramer and pentamer isomers and averages C_{13}) with 6 moles of ethylene oxide. (No Demonstration of Support)

c. α-Alkyl (C_6-C_{14})-ω-hydroxypoly(oxypropylene) block copolymer with polyoxyethylene; polyoxypropylene content is 1-3 moles; polyoxyethylene content is 4-12 moles; average molecular weight (in amu) is approximately 635. (Demonstration of Support)

d. α-(*p-tert*-Butylphenyl)-ω-hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 4-12 moles. (No Demonstration of Support)

e. α-(*o*,*p*-Dinonylphenyl)-ω-hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 moles. (No Demonstration of Support)

f. α-(*o*,*p*-Dinonylphenyl)-ω-hydroxypoly (oxyethylene) produced by condensation of 1 mole of dinonylphenol (nonyl group is a propylene trimer isomer) with an average of 4-14 or 140-160 moles of ethylene oxide. (No Demonstration of Support)

g. Dodecylbenzenesulfonic acid, amine salts. (No Demonstration of Support)

h. α-(*p*-Dodecylphenyl)-ω-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of dodecylphenol (dodecyl group is a propylene tetramer isomer) with an average of 4-14 or 30-70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4-14 or 30-70. (No Demonstration of Support)

i. Ethylene oxide adducts of 2,4,7,9-tetramethyl-5-decynediol, the ethylene oxide content averages 3.5, 10, or 30 moles. (Demonstration of Support)

j. α-Lauryl-ω-hydroxypoly(oxyethylene), average molecular weight (in amu) of 600. (Demonstration of Support)

k. α-Lauryl-ω-hydroxypoly(oxyethylene) sulfate, sodium salt; the poly(oxyethylene) content is 3-4 moles. (Demonstration of Support)

l. Manganous oxide. (No Demonstration of Support)

m. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly (oxyethylene) content averages 4-14 moles or 30 moles. (Demonstration of Support)

n. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles. (Demonstration of Support)

o. Polyglyceryl phthalate ester of coconut oil fatty acids. (No Demonstration of Support)

p. Poly(methylene-*p*-*tert*-butylphenoxy)- poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4-12 moles. (No Demonstration of Support)

q. Poly(methylene-*p*-nonylphenoxy)poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4-12 moles. (No Demonstration of Support)

r. Secondary alkyl (C_{11}-C_{15}) poly(oxyethylene) acetate, sodium salt; the ethylene oxide content averages 5 moles. (No Demonstration of Support)

s. Sodium diisobutylnaphthalenesulfonate. (Demonstration of Support)

t. Sodium dodecylphenoxybenzenedisulfonate. (Demonstration of Support)

u. Sodium isopropylisohexylnaphthalenesulfonate. (No Demonstration of Support)

v. Sodium lauryl glyceryl ether sulfonate. (No Demonstration of Support)

w. Sodium monoalkyl and dialkyl (C_8-C_{16}) phenoxybenzenedisulfonate mixtures containing not less than 70% of the monoalkylated product. (Demonstration of Support)

x. Sodium mono- and dimethylnaphthalenesulfonates, molecular weight (in amu) 245-260. (Demonstration of Support)

y. Sodium mono-, di-, and tributyl naphthalenesulfonates. (Demonstration of Support)

z. Sodium mono-, di-, and triisopropyl naphthalenesulfonate. (Demonstration of Support)

aa. Sodium *N*-oleoyl-*N*-methyltaurine. (Demonstration of Support)

bb. Sodium sulfite. (Demonstration of Support)

cc. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl)phenol with a range of 1-14 or 30-70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1-14 or 30-70. (Demonstration of Support)

dd. α-[*p*-(1,1,3,3-Tetramethylbutyl) phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl) phenol with an average of 4-14 or 30-70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4-14 or 30-70. (Administrative Revocation is Complete).

ee. Tridecylpoly(oxyethylene) acetate, sodium salt; where the ethylene oxide content averages 6-7 moles. (No Demonstration of Support)

In the final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415), the Agency revoked one other inert ingredient tolerance exemption that was inadvertently removed from the CFR some time ago but is considered to be an active tolerance exemption under § 180.910:

''α-Alkyl(C_{12}-C_{15})-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the poly(oxyethylene) content averages 3 moles.'' (Demonstration of Support)

Under § 180.920:

a. α-Alkyl (C_{12}-C_{18})-ω-hydroxypoly(oxyethylene) copolymers with poly(oxypropylene); polyoxyethylene content averages 3-12 moles and polyoxypropylene content 2-9 moles. (Demonstration of Support)

b. α-Alkyl (C_{10}-C_{16})-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 3-20 moles. (Demonstration of Support)

c. α-Alkyl (C_{12}-C_{15})-ω-hydroxypoly(oxyethylene) sulfosuccinate, isopropylamine and *N*-hydroxyethyl isopropylamine salts of; the poly(oxyethylene) content averages 3-12 moles. (No Demonstration of Support)

d. α-Alkyl(C_{10}-$_{12}$)-ω-hydroxpoly(oxyethylene) poly(oxypropylene) copolymer; poly(oxyethylene) content is 11-15 moles; poly(oxyproplene) content is 1-3 moles. (No Demonstration of Support)

e. α-Alkyl(C_{12}-C_{18})-ω-hydroxypoly (oxyethylene/oxypropylene) hetero polymer in which the oxyethylene content averages 13-17 moles and the oxypropylene content averages 2-6 moles. (Demonstration of Support)

f. α-Alkyl (C_{10}-C_{16})-ω-hydroxypoly(oxyethylene)poly (oxypropylene) mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the combined poly(oxyethylene) poly(oxypropylene) content averages 3-20 moles. (Demonstration of Support)

g. α-Alkyl (C_{12}-C_{18})-ω-hydroxypoly(oxyethylene/oxypropylene) hetero polymer in which the oxyethylene content is 8-12 moles and the oxypropylene content is 3-7 moles. (Demonstration of Support)

h. α-Alkyl (C_{12}-C_{15})-ω-hydroxypoly(oxyethylene/oxypropylene) hetero polymer in which the oxyethylene content is 8-13 moles and the oxypropylene content is 7-30 moles. (Demonstration of Support)

i. α-Alkyl (C_{21}-C_{71})-ω-hydroxypoly (oxyethylene) in which the poly(oxyethylene) content is 2 to 91 moles and molecular weight range from 390 to 5,000. (Demonstration of Support)

j. *n*-Alkyl(C_8-C_{18})amine acetate. (Demonstration of Support)

k. Amine salts of alkyl (C_8-C_{24}) benzenesulfonic acid (butylamine, dimethylaminopropylamine, mono- and diisopropylamine, mono- , di- , and triethanolamine). (Demonstration of Support)

l. *N*-(Aminoethyl) ethanolamine salt of dodecylbenzenesulfonic acid. (No Demonstration of Support)

m. *N*,*N*-Bis[α-ethyl-ω-hydroxypoly(oxyethylene) alkylamine; the poly(oxyethylene) content averages 3 moles; the alkyl groups (C_{14}-C_{18}) are derived from tallow, or from soybean or cottonseed oil acids. (Demonstration of Support)

n. *N*,*N*-Bis(2-hydroxyethyl)alkylamine, where the alkyl groups (C_8-C_{18}) are derived from coconut, cottonseed, soya, or tallow acids. (Demonstration of Support)

o. *N*,*N*-Bis 2-(ω-hydroxypolyoxyethylene) ethyl) alkylamine; the reaction product of 1 mole *N*,*N*-bis(2-hydroxyethyl)alkylamine and 3-60 moles of ethylene oxide, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids. (Demonstration of Support)

p. *N,N*-Bis-2-(ω-hydroxypolyoxyethylene/polyoxypropylene) ethyl alkylamine; the reaction product of 1 mole of *N,N*-bis(2-hydroxyethyl alkylamine) and 3-60 moles of ethylene oxide and propylene oxide, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids. (Demonstration of Support)

q. Butoxytriethylene glycol phosphate. (No Demonstration of Support)

r. Cyclohexanol. (No Demonstration of Support)

s. α-(Di-*sec*-butyl)phenylpoly(oxypropylene) block polymer with poly(oxyethylene); the poly(oxypropylene) content averages 4 moles, the poly(oxyethylene) content averages 5 to 12 moles, the molecular. (Demonstration of Support)

t. Disodium 4-isodecyl sulfosuccinate. (No Demonstration of Support)

u. Dodecylphenol. (No Demonstration of Support)

v. α-Dodecylphenol-ω-hydroxypoly(oxyethylene/oxypropylene) hetero polymer where ethylene oxide content is 11-13 moles and oxypropylene content is 14-16 moles, molecular weight (in amu) averages 600 to 965. (No Demonstration of Support)

w. Isopropylbenzenesulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts. (No Demonstration of Support)

x. (3-Lauramidopropyl) trimethylammonium methyl sulfate. (No Demonstration of Support)

y. Linoleic diethanolamide (CAS Reg. No. 56863–02–6). (Demonstration of Support)

z. Methyl bis(2-hydroxyethyl)alkyl ammonium chloride, where the carbon chain (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids. (Demonstration of Support)

aa. α,α′-[Methylenebis]-4-(1,1,3,3-tetramethylbutyl)-*o*-phenylene bis[ω-hydroxypoly(oxyethylene)] having 6-7.5 moles of ethylene oxide per hydroxyl group. (No Demonstration of Support)

bb. Methylnaphthalenesulfonic acid—formaldehyde condensate, sodium salt. (Demonstration of Support)

cc. Methyl poly(oxyethylene) alkyl ammonium chloride, where the poly(oxyethylene) content is 3-15 moles and the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids. (Demonstration of Support)

dd. Methyl violet 2B. (No Demonstration of Support)

ee. Morpholine salt of dodecylbenzenesulfonic acid. (No Demonstration of Support)

ff. Naphthalenesulfonic acid-formaldehyde condensate, ammonium and sodium salts. (Demonstration of Support)

gg. Partial sodium salt of *N*-lauryl-α-iminodipropionic acid. (Demonstration of Support)

hh. Poly(methylene-*p*-nonylphenoxy)poly(oxypropylene) propanol; the poly(oxy-propylene) content averages 4-12 moles. (No Demonstration of Support)

ii. Primary *n*-alkylamines, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids. (Demonstration of Support)

jj. Sodium butyl naphthalenesulfonate. (Administrative Revocation is Complete).

kk. Sodium 1,4-dicyclohexyl sulfosuccinate. (No Demonstration of Support)

ll. Sodium 1,4-dihexyl sulfosuccinate. (Demonstration of Support)

mm. Sodium 1,4-diisobutyl sulfosuccinate. (Demonstration of Support)

nn. Sodium 1,4-dipentyl sulfosuccinate. (Demonstration of Support)

oo. Sodium 1,4-ditridecyl sulfosuccinate. (No Demonstration of Support)

pp. Sodium mono- and dimethyl naphthalenesulfonate; molecular weight (in amu) 245-260. (Administrative Revocation is Complete).

qq. Sulfosuccinic acid ester with *N*-(2,-hydroxy-propyl) oleamide, ammonia and isopropylamine salts of. (No Demonstration of Support)

rr. Tall oil diesters with polypropylene glycol (CAS Reg. No. 68648–12–4). (No Demonstration of Support)

ss. *N,N,N′,N″*–Tetrakis–(2-hydroxypropyl) ethylenediamine. (Demonstration of Support)

tt. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding sodium salts of the phosphate esters; the poly(oxyethylene) content averages 6 to 10 moles. (No Demonstration of Support)

Under § 180.930:

a. α-Alkyl (C_9-C_{18})-ω-hydroxy poly(oxyethylene): the poly(oxyethylene) content averages 2-20 moles. (No Demonstration of Support)

b. α-Alkyl (C_{12}-C_{15})-ω-hydroxypoly(oxyethylene/oxypropylene) hetero polymer in which the oxyethylene content is 8-13 moles and the oxypropylene content is 7-30 moles. (Demonstration of Support)

c. α-Alkyl (C_8-C_{10}) hydroxypoly(oxypropylene) block polymer with polyoxyethylene; polyoxypropylene content averages 3 moles and polyoxyethylene content averages 5-12 moles. (Demonstration of Support)

d. α-Alkyl (C_6-C_{14})-ω-hydroxypoly(oxypropylene) block copolymer with polyoxyethylene; polyoxypropylene content is 1-3 moles; polyoxyethylene content is 7-9 moles; average molecular weight (in amu) approximately 635. (No Demonstration of Support)

e. α-(*p*-Alkylphenyl)-ω-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of alkylphenol (alkyl is a mixture of propylene tetramer and pentamer isomers and averages C_{13}) with 6 moles of ethylene oxide. (No Demonstration of Support)

f. Amine salts of alkyl (C_8-C_{24}) benzenesulfonic acid (butylamine; dimethylamino propylamine; mono- and diisopropyl- amine; and mono- , di- , and triethanolamine). (Demonstration of Support)

g. α-(*p-tert*- Butylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 4-12 moles. (No Demonstration of Support)

h. α-(*o,p*-Dinonylphenyl)-ω-hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 moles. (No Demonstration of Support)

i. α-(*o,p*-Dinonylphenyl)-ω-hydroxypoly (oxyethylene), produced by the condensation of 1 mole of dinonylphenol (nonyl group is a propylene trimer isomer) with an average of 4-14 moles of ethylene oxide. (No Demonstration of Support)

j. Dodecylbenzenesulfonic acid, amine salts. (No Demonstration of Support)

k. α-(*p*-Dodecylphenyl)-ω-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of dodecylphenol (dodecyl group is a propylene tetramer isomer) with an average of 4-14 or 30-70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the

blend shall be in the range of 4-14 or 30-70 moles. (No Demonstration of Support)

l. Ethylene oxide adducts of 2,4,7,9-tetramethyl-5-decynediol, the ethylene oxide content averages 3.5, 10, or 30 moles. (Demonstration of Support)

m. Ethyl vinyl acetate (CAS Reg. No. 24937–78–8). (Administrative Revocation is Complete).

n. α–Lauryl–ω-hydroxypoly(oxyethylene), average molecular weight (in amu) of 600. (No Demonstration of Support)

o. α-Lauryl-ω-hydroxypoly(oxyethylene), sulfate, sodium salt; the poly(oxyethylene) content is 3-4 moles. (No Demonstration of Support)

p. Manganous oxide. (No Demonstration of Support)

q. α-(Methylene (4-(1,1,3,3-tetramethylbutyl)-*o*-phenylene) bis-ω-hydroxypoly(oxyethylene) having 6-7.5 moles of ethylene oxide per hydroxyl group. (Administrative Revocation is Complete).

r. Mono-, di-, and trimethylnaphthalenesulfonic acids-formaldehyde condensates, sodium salts. (No Demonstration of Support)

s. Naphthalenesulfonic acid and its sodium salt. (No Demonstration of Support)

t. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 moles. (Demonstration of Support)

u. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles. (Demonstration of Support)

v. α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 or 30-90 moles of ethyiene oxide. (No Demonstration of Support)

w. Polyglyceryl phthalate esters of coconut oil fatty acids. (Demonstration of Support)

x. Poly(methylene-*p*-*tert*-butylphenoxy)poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4-12 moles. (No Demonstration of Support)

y. Poly(methylene-*p*-nonylphenoxy)poly(oxyethylene) ethanol; the poly(oxyethylene) content averages 4-12 moles. (No Demonstration of Support)

z. Poly(methylene-*p*-nonylphenoxy)poly(oxypropylene) propanol; the poly(oxypropylene) content averages 4-12 moles. (No Demonstration of Support)

aa. Secondary alkyl (C_{11}-C_{15}) poly(oxyethylene) acetate, sodium salt; the ethylene oxide content averages 5 moles. (No Demonstration of Support)

bb. Sodium butylnaphthalenesulfonate. (Administrative Revocation is Complete).

cc. Sodium diisobutylnaphthalenesulfonate. (No Demonstration of Support)

dd. Sodium isopropylisohexylnaphthalenesulfonate. (No Demonstration of Support)

ee. Sodium isopropylnaphthalenesulfonate. (Demonstration of Support)

ff. Sodium monoalkyl and diakyl (C_8-C_{13}) phenoxybenzenedisulfonate mixtures containing not less than 70% of the monoalkylated product. (No Demonstration of Support)

gg. Sodium mono- and dimethylnaphthalenesulfonate, molecular weight (in amu) 245-260. (Demonstration of Support)

hh. Sodium mono-, di-, and tributylnaphthalenesulfonates. (Demonstration of Support)

ii. Sodium *N*-oleoyl-*N*-methyl taurine. (Demonstration of Support)

jj. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p* (1,1,3,3-tetramethylbutyl)phenol with a range of 1-14 or 30-70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1-14 or 30-70. (No Demonstration of Support)

kk. α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,-3,3-tetramethylbutyl) phenol with an average of 4-14 or 30-70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4-14 or 30-70. (Administrative Revocation is Complete).

ll. Tridecylpoly(oxyethylene) acetate sodiums salt; where the ethylene oxide content averages 6-7 moles. (No Demonstration of Support)

In the final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415), the Agency revoked one other inert ingredient tolerance exemption that was inadvertently removed from the CFR some time ago but is considered to be an active tolerance exemption under § 180.930:

''α-Alkyl (C_{12}-C_{15})-ω-hydroxypoly(oxyethylene) sulfate and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the poly(oxyethylene) content averages 3 moles.'' (Demonstration of Support)

Under § 180.940:

Under paragraph (a):

i. α-Alkyl(C_{10}-C_{14})-ω- hydroxypoly (oxyethylene) poly(oxypropylene) average molecular weight (in amu), 768 to 837. (No Demonstration of Support)

ii. α-Alkyl(C_{12}-C_{18})-ω hydroxypoly (oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1120. (No Demonstration of Support)

Under paragraph (b):

i. α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8-9 moles ethylene oxide, average molecular weight (in amu), 400. (No Demonstration of Support)

ii. Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis [propanol] (4:1). (No Demonstration of Support)

Under paragraph (c):

i. α-Alkyl(C_{10}-C_{14})-ω-hydroxypoly (oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837. (No Demonstration of Support)

ii. α-Alkyl(C_{11}-C_{15})-ω-hydroxypoly (oxyethylene) with ethylene oxide content 9 to 13 moles. (Demonstration of Support)

iii. α-Alkyl(C_{12}-C_{15})-ω-hydroxypoly (oxyethylene) polyoxypropylene, average molecular weight (in amu), 965. (No Demonstration of Support)

iv. α-Alkyl(C_{12}-C_{18})-ω-hydroxypoly (oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1120. (No Demonstration of Support)

v. α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8-9 moles ethylene oxide, average molecular weight (in amu), 400. (No Demonstration of Support)

vi. Naphthalene sulfonic acid, sodium salt. (No Demonstration of Support)

vii. Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives. (Demonstration of Support)

viii. Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl

and trimethyl derivatives alkylated at 3% by weight with C_6-C_9 linear olefins. (Demonstration of Support)

ix. Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis [propanol] (4:1). (No Demonstration of Support)

List of Subjects

Environmental protection.

Dated: October 24, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–21594 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1015; FRL–8153–8]

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 December 3, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1015 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 EPA–HQ–OPP–2007–1015 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 7F7236	EPA–HQ–OPP–2007–1020
PP 7F7254	EPA–HQ–OPP–2007–0830
PP 7F7249	EPA–HQ–OPP–2007–1025

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*.

A. Amendment to Existing Tolerance Exemption

1. *PP 7F7236*. Growth Products Ltd., P.O. Box 1259, White Plains, NY 10602, proposes to amend the tolerance exemption in 40 CFR 180.1111 for residues of the fungicide *Bacillus subtilis* GB03 tolerance in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practice. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Susanne Cerrelli, (703) 308–8077, *cerrelli.susanne@epa.gov*.

B. New Exemptions from Tolerance

2. *PP 7F7254*. Syngenta Seeds, Inc., P.O. Box 12257, 3054 E. Cornwallis Rd., Research Triangle Park, NC 27709, proposes to establish an exemption from the requirement of a tolerance for residues of the plant-incorporated protectant, Bacillus thuringiensis Vip3Aa proteins in all plants when used as plant-incorporated protectants in all crops and agricultural commodities. Syngenta's original petition requested an exemption for Bacillus thuringiensis Vip3Aa19 and Vip3Aa20 proteins in all plants; however, this original request was amended by Syngenta in a letter to the Agency dated September 6, 2007 to Bacillus thuringiensis Vip3Aa proteins in all plants. The petition includes a reference to a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. Contact: Alan Reynolds, (703) 605–0515, *reynolds.alan@epa.gov*.

3. *PP 7F7249*. Plasma Power Limited of India, c/o OMC Ag Consulting, 828 Tanglewood Lane, East Lancing, MI 48823, proposes to establish an exemption from the requirement of a tolerance for residues of the insecticide, Plasma Neem Oil™ Manufacturing Use Product in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Driss Benmhend, (703) 308–9525, *benmhend.driss@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 24, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–21601 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0076; FRL–8490–4]

Final Notice of Data Availability for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: On March 15, 2006, EPA promulgated Federal Implementation Plans (FIPs) for all States covered by the Clean Air Interstate Rule (CAIR). The CAIR FIPs will regulate electric generating units (EGUs) in the affected States and achieve the emission reductions required by CAIR until each affected State has an approved CAIR State Implementation Plan (SIP) to achieve the reductions. EPA will withdraw a State's FIP in coordination with approval of a full CAIR SIP implementing the requirements of CAIR.

The CAIR FIP indicates that the Administrator will determine by order the CAIR NO_X allowance allocations. In the CAIR FIP, EPA stated that it would publish a NODA with NO_X allowance allocations for 2009 through 2014, provide the public with the opportunity to object to the allocations and underlying data, and then publish a final NODA (adjusted if necessary). On August 4, 2006, EPA published a preliminary NODA in the **Federal Register** and accepted objections to the data through an electronic docket. This action constitutes the final NODA and indicates the existing units receiving CAIR NO_X allowances under the FIPs and the quantity of allowances to be allocated to each unit. These FIP allowances will only be recorded for sources located in States that do not have an approved SIP in place. Most States have an approved SIP in place, and the State determined allowances will be recorded for sources in these states.

In this NODA, the EPA is making available to the public the Agency's final determination of the NO_X annual and NO_X ozone season allocations under the CAIR FIPs that EPA is making

to individual existing units under the CAIR FIP NO_X annual and NO_X ozone season trading programs for 2009 through 2014, as well as the data relating to those allocations. The NODA references, or presents in tables, all these data and the NO_X annual and NO_X ozone season allowance allocations calculated using the data and the allocation formulas finalized in the CAIR FIPs for existing units for 2009 through 2014.

DATES: The recordation deadline for 2009 CAIR FIP NO_X allowances is September 30, 2007. EPA intends to record CAIR FIP NO_X allowances in the fall of 2007. EPA is close to taking final action on many SIPs. Because it is EPA's preference to have States determine allowances, EPA is trying to finalize these approvals before allocating FIP allowances, so wherever possible, State-determined allowances will be allocated to sources.

Docket: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0076. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., confidential business information 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 at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: General questions concerning this action and technical questions concerning heat input or fuel data should be addressed to Brian Fisher, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Ave., Mail Code 6204 J, Washington, DC 20460. Telephone at (202) 343–9633, e-mail at *fisher.brian@epa.gov.*

If mailing by courier, address package to Brian Fisher, 1310 L St., NW., RM #713G, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

Outline

1. General Information
2. What Is This Action?
3. How Are the Data in this NODA Related to the CAIR FIP NO_X Allowance Allocations?
4. What Are the Sources of the EPA's Data?
5. How Do I Interpret the Data Tables Presented Through This NODA?
6. Is the EPA Requesting Objections to These Data?
7. What Data Is EPA Making Available?
8. Where Can I Get the Data Discussed in This NODA?

1. General Information

This action relates to §§ 97.141 and 97.341 of the CAIR FIP. These sections indicate that the Administrator will determine by order the CAIR NO_X allowance allocations. In the CAIR FIP, EPA stated that it would publish a NODA with NO_X allowance allocations for 2009 through 2014 (71 FR 25352).

Does This Action Apply to Me?

Categories and entities potentially regulated by this action include the following:

Category	NAICS code	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	221122	Fossil fuel-fired electric utility steam generating units.
State/local/Tribal government.	221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. If you have any questions regarding the applicability of this action to a particular entity, review §§ 97.102, 97.104, and 97.105 in the CAIR FIP concerning NO_X annual emissions and §§ 97.302, 97.304, and 97.305 in the CAIR FIP concerning NO_X ozone season emissions. You may also consult the person listed in the preceding section under **FOR FURTHER INFORMATION CONTACT**.

The NO_X allowance allocations in this NODA are for existing units. Existing units are units that commenced operation before January 1, 2001. New units, which commence operation on or after January 1, 2001, will initially receive allowances through the new unit set aside. Once new units have established a five-year baseline, they will be incorporated into the calculation for allowances for existing units for future years to the extent the allowances for existing units have not already been allocated.

The CAIR FIP rule states units will be subject to the CAIR FIP trading programs (i.e, to the CAIR FIP SO_2, NO_X annual, or NO_X ozone season programs, as appropriate) if they are a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time on or after November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Certain cogeneration units or solid waste incineration units meeting these general applicability requirements are exempt from the CAIR FIPs and are described below. The inventory of existing potential CAIR units, which comprises the units allocated allowances under this NODA, is based on EPA's preliminary application of the general applicability requirements and these exemptions. As discussed in the preliminary NODA and in this action, the inventory does not reflect a final determination of which units are subject to the CAIR FIPs.

Cogeneration Unit Exemption

Certain cogeneration units meeting the general applicability requirements are exempt from the CAIR FIP trading programs. Cogeneration units are units having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through sequential use of energy and meeting certain operating and efficiency standards. Any cogeneration unit not serving at any time (since the later of November 15, 1990 or the start-up of the unit) a generator with a nameplate capacity greater than 25 MWe, supplying more than ⅓ potential electric output capacity, and more than 219,000 Mw-hrs, annually to any utility power distribution system for sale is exempt from the requirements of the CAIR FIP trading rules. Otherwise, a cogeneration

unit meeting the general applicability requirements is subject to the CAIR FIPs.

The CAIR FIP defined ''cogeneration unit'' as a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Subsequent to the CAIR FIP rulemaking, EPA finalized another action that modified the definition of ''cogeneration unit'' (and made other revisions to the definitions under the CAIR FIPs) to exclude energy input from biomass fuel when calculating efficiency of cogeneration units that are boilers. This makes it possible for some additional cogeneration units that co-fire biomass to qualify for exemption from the CAIR FIP rules. The inventory of existing potential CAIR units and the allocation tables in this action that are based on the inventory reflect EPA's preliminary application of the revised cogeneration unit definition and the other revisions to the definitions under the CAIR FIPs.

Solid Waste Incinerator Exemption

A solid waste incineration unit meeting the general applicability requirements and commencing operation before January 1, 1985, for which the average annual fuel consumption of non-fossil fuels during 1985–1987 exceeded 80 percent and the average annual fuel consumption of non-fossil fuels during any 3 consecutive calendar years after 1990 exceeds 80 percent, is not subject to the CAIR FIP cap-and-trade program. Further, a solid waste incineration unit meeting the general applicability requirements and commencing operation on or after January 1, 1985, for which the average annual fuel consumption of non-fossil fuels for the first 3 calendar years of operation exceeds 80 percent and the average annual fuel consumption of non-fossil fuels during any 3 consecutive calendar years after 1990 exceeds 80 percent, is not subject to the CAIR FIP cap- and trade program. The inventory of existing potential CAIR units, and the allocation tables in this action that are based on the inventory, reflect EPA's preliminary application of the solid waste incineration unit exemption.

2. What Is This Action?

In the March 15, 2006 final action on the CAIR FIP, the EPA finalized NO_X annual and ozone season trading programs for EGUs as the federal implementation remedy for CAIR. The EPA decided to adopt, as the FIP for each State in the CAIR region, the model cap-and-trade programs in the final CAIR, modified slightly to allow for federal instead of State implementation (as revised March 15, 2006).

These programs include a NO_X annual trading program and NO_X ozone season trading program. As explained in the CAIR FIP Notice of Final Rulemaking (NFR), the FIP NO_X annual and NO_X ozone season trading programs require CAIR sources to hold allowances sufficient to cover their emissions for each control period. A CAIR NO_X annual allowance will authorize the emission of a ton of NO_X during a calendar year, and a CAIR NO_X ozone season allowance will authorize the emission of a ton of NO_X during an ozone season (May 1 through September 30).

In the CAIR FIP NFR, EPA adopted the State NO_X annual and NO_X ozone season emission budgets for each State covered by a CAIR FIP (see Tables V–1 and V–2 in the CAIR FIP NFR); these are the same State emission budgets as finalized in the CAIR. For each State covered by the CAIR FIP NO_X trading programs, the State NO_X budgets are the total amount of allowances that EPA will allocate to sources in that State for use in the FIP NO_X trading programs. EPA determined the method for allocating NO_X annual and NO_X ozone season allowances under the FIP through a process that included extensive public participation.

In this action, we are finalizing the inventory of existing units that currently are potential CAIR units solely for purposes of allocating allowances for 2009–2014, the heat input, fuel type, and resulting baseline heat input data used to calculate the NO_X allowance allocation to the identified existing potential CAIR units under the CAIR FIPs, and the resulting allowance allocations themselves for 2009–2014.[1]

The inventory of existing potential CAIR units was proposed, and is finalized, only for the purpose of making allocations for 2009–2014. The inventory, and the data on which the inventory is based, can be revised in future NODAs addressing allocations. Furthermore, the inclusion of a unit in the inventory (and thus in the FIP allocations for 2009–2014) does not constitute a determination that the unit is subject to the requirements of the CAIR FIPs; similarly, the exclusion of a unit from the inventory (and thus from the allowance allocations for 2009–2014) does not constitute a determination that the unit is not covered by the CAIR FIPs. However, EPA has made specific determinations for certain individual units, for which objections concerning the inclusion in or exclusion from the inventory were submitted in response to this NODA or for which a request for an applicability determination was submitted under § 97.104(c) or 97.304(c) are covered by a CAIR FIP. These determinations are binding, subject to any conditions set forth in the respective determinations and to any administrative appeals under Part 78 of EPA's regulations. Copies of these determinations are included in the docket for this NODA.

EPA notes that, in some cases where objections to the inclusion of a unit in or exclusion of a unit from the inventory were submitted in response to this NODA or where a request for an applicability determination was submitted under § 97.104(c) or 97.304(c), EPA issued an applicability determination that is used in developing the final inventory, and is included in the docket, for this NODA. However, in some cases EPA was unable to complete the applicability determination in time for issuance of this NODA. In the latter cases, the units are being included in the inventory of potential existing CAIR units and allocated allowances in this NODA. However, EPA intends to complete the process of issuing an applicability determination in each of these cases in the relatively near future. The inclusion of these units in the inventory in no way indicates what

[1] EPA notes that if, subsequent to this NODA, a determination is made that a source included in this inventory is not subject to CAIR, then the Administrator will deduct any unused allocated allowances as established in the procedures set forth in §§ 97.154(b) and 97.354(b), and transfer them to a new unit set-aside for the appropriate State.

applicability determination EPA will make and whether the units are subject to the CAIR FIPs. In fact, as discussed below, the CAIR FIPs include procedures for addressing units that are allocated CAIR FIP allowances but are subsequently determined not to be subject to the CAIR FIPs.

This action explains what heat input and fuel type data, and resulting baseline heat inputs, are used in calculating the allocation for each potential existing unit and from where these data came. The EPA published a draft NODA in 2006 to provide opportunity for the public (including source owners and operators) to submit objections to the underlying data (including the resulting baseline heat inputs and allocations). This action incorporates data submitted through those objections if the data were determined to be the best available data. Under the CAIR FIP trading rules (40 CFR 97.142(a)(3) and 97.342(a)(3)), we explained that we determine what data are the best available by ''weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.'' For existing potential CAIR units, this NODA represents the final determination of the heat input and fuel type data used in the allocations for 2009–2014. Similarly, this NODA represents the final determination of the 2009–2014 allocations themselves. However, EPA will issue NODAs in the future to address CAIR FIP allocations for 2009–2014 for new potential CAIR units and for 2015 and thereafter for existing and new potential CAIR units and will provide an opportunity for objections.

The Agency's preference is for States to make decisions about NO_X allocations for their sources. Although in this action EPA is determining NO_X allocations for the CAIR FIP trading programs, we intend to record EPA-determined allocations in allowance accounts only for sources located in a State without a timely, approved CAIR SIP revision or a timely, approved abbreviated CAIR SIP revision providing for State-determined allocations. In future NODAs, EPA intends to determine allowance allocations only for States subject to the FIP at that time.

Deadlines for States to submit CAIR SIP revisions and associated NO_X allocations and for EPA to record NO_X allocations in source accounts are as finalized in the CAIR (*see* 70 FR 25162, 25323 and 25326) and CAIR FIP (*see* 71 FR 25328, 25352–55). EPA discusses these deadlines herein for informational purposes only. As finalized in the CAIR and CAIR FIP NFRs, SIP submission deadlines are as follows:

- Full CAIR SIP revision: Submit SIP revision by September 11, 2006 and initial set of NO_X allocations (covering at least 2009 through 2011) by October 31, 2006;
- Abbreviated CAIR SIP revision [2]: Submit SIP revision by March 31, 2007 and initial set of NO_X allocations (covering at least 2009 through 2011) by April 30, 2007.

In this action, EPA determines CAIR NO_X allocations covering 2009 through 2014 under the CAIR FIPs. As finalized in the CAIR FIP NFR, the Agency will record EPA-determined CAIR NO_X allocations in source accounts one year at a time for 2009 and 2010 in order to provide flexibility to States to determine allocations for their sources. The final schedule for recording CAIR NO_X allocations under the FIP in source accounts is shown in Table VI–2 in the CAIR FIP NFR preamble and reproduced here for informational purposes:

TABLE I.—RECORDATION DEADLINES FOR CAIR FIP NO_X ALLOCATIONS

CAIR control period	Deadline by which FIP NO_X allocations are recorded (EPA-determined allocations or State-determined allocations using abbreviated CAIR SIP revision)
2009	September 30, 2007.*
2010	September 30, 2008.
2011	September 30, 2009.
2012	September 30, 2009.
2013	September 30, 2009.
2014	December 1, 2010.
2015	December 1, 2011.
2016	December 1, 2012.

* EPA intends to records these allowances in the Fall of 2007.

3. How Are the Data in This NODA Related to the CAIR FIP NO_X Allowance Allocations?

In the CAIR FIP NFR, EPA finalized the schedule for determining and recording NO_X allocations. EPA also finalized a methodology for calculating unit level NO_X allowances. This NODA provides the unit level NO_X allocations for existing potential CAIR units for 2009 through 2014 calculated using this methodology, as well as the data used in determining the inventory of existing potential CAIR units and the heat input and fuel type data and resulting baseline heat inputs, used in making the allowance calculations.

As provided in the CAIR FIP NO_X annual and ozone season trading rules (*see* 40 CFR 97.141 and 97.341), EPA is publishing this NODA with CAIR FIP NO_X allocations for existing potential CAIR units for 2009 through 2014. This final NODA reflects EPA's consideration of objections submitted to the 2006 CAIR FIP NODA that addressed whether any individual unit is treated as an existing potential CAIR unit eligible for allowance allocations in accordance with the applicability provisions in these trading rules (*see* 40 CFR 97.104 and 97.305) and whether any unit allocation is determined in accordance with the allocation provisions in these trading rules (*see* 40 CFR 97.142 and 97.342).

In the CAIR FIP NFR, EPA finalized an allocation approach for NO_X annual and ozone season allowances for existing units (i.e., units commencing operation before January 1, 2001) and new units (i.e., units commencing operation on or after January 1, 2001) that is consistent with the example methodology in the CAIR SIP model trading rules. EPA used the NO_X allocation method finalized in the FIP NFR to calculate the existing unit NO_X allocations in this NODA. This action does not address new unit allocations. New unit allocation and recordation provisions under the CAIR FIP may be found in §§ 97.141, 97.341, 97.153 and 97.353. *See* 71 FR 25356–58 for detailed description of the allocation method. EPA will publish a preliminary and final NODA in 2009 for new unit allowance allocations for 2009.

The NO_X allocation method in the CAIR FIP NFR was finalized through a process that involved significant public participation. The NO_X CAIR FIP NODA did not open the allocation method for public comment. EPA provides a summary of the NO_X allocation method herein for informational purposes only.

Allocations in this NODA are for existing units for the first 6 control periods (2009 through 2014) of the CAIR NO_X annual and NO_X ozone season trading programs. The 2009 allowance allocations will be recorded in the fall of 2007. It is possible that future year allowance allocations (2010 through 2014) will differ from those in this NODA as new potential CAIR units develop baseline heat input values and are treated as existing potential CAIR units, and as units that are not potential CAIR units become potential CAIR units. The NO_X allocation method finalized in the CAIR FIP NFR allocates by using annual heat input data from the years 2000 through 2004 to develop baseline heat inputs. The annual heat input values are adjusted using fuel

[2] *See* CAIR FIP NFR (71 FR 25352) for further discussion of abbreviated CAIR SIP revisions.

adjustment factors (1.0 for coal-fired units, 0.6 for oil-fired units, and 0.4 for units fired with all other fuels (e.g., natural gas)). The 3 highest annual heat input values for the unit are averaged to determine the unit's baseline heat input. Finally, the total amount of allowances available for allocation each year to existing units in a given State (i.e., 95% of the State trading budget) is allocated to each individual unit in proportion to the unit's share of the total baseline heat input for all existing potential CAIR units in the State. The same methodology applies for ozone season allowances, only ozone season heat input is used in place of annual heat input.

This NODA provides unit NO_X allocations calculated according to the method finalized in the CAIR FIP NFR. Section 8 of this NODA describes where to locate the allocation tables. The heat input and fuel type data used to determine these allocations are described in section 4 of this NODA.

4. What Are the Sources of EPA's Data?

A. Development of the Inventory of Existing Potential CAIR Units

Diagram 1 in the Technical Support Document (TSD) provides a general overview of how the inventory of existing potential CAIR units was developed. Any existing unit currently reporting monitoring data under the Acid Rain Program (referred to in this NODA as ''Acid Rain units'') in a CAIR FIP State, except for an Acid Rain Program opt-in unit, was included as an existing potential CAIR unit. The list of Acid Rain units in the States was generated from EPA's Acid Rain Program database. Units not reporting monitoring data under the Acid Rain Program (referred to in this NODA as ''non-Acid Rain units'') that are existing potential CAIR units were identified using data reported by owners of generators to the Energy Information Administration (EIA) on forms 860 and 767 or through objections submitted by the source owners and operators.

From the EIA form 860 database, EPA identified, for non-Acid Rain units, all generators with a nameplate capacity greater than 25 MWe served by a boiler or turbine with a fossil fuel energy source. In determining whether a unit has a fossil fuel energy source, EPA applied the definition of ''fossil fuel'' in the CAIR FIPs (40 CFR 97.102 and 97.302). From that list we then excluded generators as follows:

- EPA excluded non-utility generators which did not sell electricity to a utility based on EIA form 860b data from 1999 and 2000. EIA form 860b sales data were not available after 2000 due to changes in the EIA form 860b. Consequently, the exclusion of generators for purposes of allocating allowances in this NODA does not necessarily mean that these generators are excluded for purposes of determining whether boilers or turbines serving them are subject to the CAIR FIPs. EPA believes, based on preliminary consideration of the applicability provisions of the CAIR FIPS, that many of these units may not be subject to the CAIR FIPs. However, if, on or after November 15, 1990, any of these generators produced electricity that was sold, the units serving that generator may be subject to the CAIR FIPs.
- From EIA form 860, EPA excluded generators at municipal waste combustors. The CAIR rule provides an exemption for solid waste incineration units similar to the Acid Rain Program exemption in 40 CFR Part 72.
- From EIA form 860b (1999 and 2000), EPA excluded all generators at facilities that were certified (in accordance with Federal Energy Regulatory Commission (FERC) regulations) as qualifying cogeneration facilities and that had annual, plant-wide sales of one third or less of the potential generating capacity, or had annual sales less than 219,000 MW-hrs, to an electric utility. This information was only available at the plant level. Since electricity sales data were not available at the unit level for other years and a unit must meet these criteria annually to qualify for the cogeneration exemption, exclusion of generators for allocating allowances in this notice does not necessarily mean that boilers and combustion turbines serving the generators are not subject to the CAIR FIPs. Moreover, FERC regulations require, as part of the criteria for qualifying cogeneration facilities that facilities meet certain efficiency requirements to the extent natural gas or oil is combusted. Under CAIR, a unit must meet the efficiency requirements with regard to all fuel types combusted, except, in the case of boilers, biomass. Consequently, exclusion of generators for allocating allowances in this notice does not necessarily mean that boilers and combustion turbines serving the generators are not subject to the CAIR FIPs.

From the EIA form 767 database, EPA identified as potential CAIR units all boilers located at non-Acid Rain plants (commencing operation before January 1, 2001) serving the generators remaining on the generator list after the above-described exclusions. Simple and combined cycle combustion turbines were identified based directly on the generator ID and prime mover type in EIA form 860.

From EIA form 860 EPA identified all simple combustion turbines, at Acid Rain plants, with a nameplate capacity greater than 25 MWe, a fossil fuel energy source, and an online date prior to January 1991. These simple combustion turbines are potential CAIR units even though they may be non-Acid Rain units since they have reported to EIA that they sell electricity to a utility based on utility ownership or EIA form 860b data from 1999 and 2000 and serve a generator greater than 25 MWe.

The resulting list of non-Acid Rain units was also checked against EPA's National Electric Energy Data System (NEEDS) database. The NEEDS database contains a list of electric generating units used to construct the ''model'' plants that represent existing and planned/committed units in EPA modeling applications of the Integrated Planning Model (IPM). The NEEDs check resulted in the addition of a number of non-Acid Rain pre-1991 combined cycle combustion turbines at Acid Rain plants.

EPA also included specific units in the inventory of existing potential CAIR units based on objections and supporting data submitted to the EPA by the owners or operators of the units involved.

EPA notes, as discussed above, that inclusion of a unit in, or exclusion of a unit from, the inventory of existing potential CAIR units (and thus the allocations for 2009–2014) reflects only a preliminary application of the applicability provisions of the CAIR FIPs and does not constitute a determination of whether the unit is subject to a CAIR FIP. The inventory was developed in order to enable EPA to calculate allowance allocations for existing units, and the data that EPA used in developing the inventory are not complete and have certain limitations. In contrast, the applicability on the CAIR FIPs to individual units must be determined based on a complete review of all relevant data, whether or not all such data were provided at the time the inventory was developed, and final application of the applicability provisions to that data. In fact, because an inventory developed for purposes of allowance allocation may not be entirely consistent with final applicability determinations, §§ 97.142(e) and 97.342(e) establish procedures to be applied when the Administrator determines that a unit that has been allocated allowances turns out not to actually be a CAIR unit, i.e., not to

actually be a unit subject to the requirements of a CAIR FIP. For example, if this determination is made after the allowance allocation is recorded but before deductions for compliance with the allowance-holding requirement are made under §§ 97.154(b) and 97.354(b), the Administrator will deduct the allowances and transfer them to a new unit set-aside for the appropriate State.

The public, including owners and operators of units that should have been, but were not included in the inventory of existing potential CAIR units in the preliminary NODA, was asked to submit objections, in response to the August 4, 2006 NODA, informing EPA that the units should be added to the inventory and allocated allowances, consistent with the applicability criteria in the CAIR FIP (in §§ 97.104 and 97.304). The data necessary for allowance allocations were also to be provided.

Applicability objections received in response to the August 4, 2006 NODA, and EPA's response concerning whether to add the units or remove the units from the inventory of existing potential CAIR units are described in the Response to Objections Document and copies of the applicability determinations are included in the CAIR FIP docket.

A unit that is not allocated allowances because of its exclusion from the inventory may ultimately be determined to be a CAIR unit. Each CAIR unit is subject to the allowance-holding requirements of CAIR regardless of whether the unit is allocated any allowances.

B. Annual and Ozone Season Fuel Heat Input Data for Acid Rain Units

EPA used heat input data reported by units under the Acid Rain Program for 2000 through 2004 in order to develop annual and ozone season baseline heat input. Fuel-adjusted heat input was calculated based on the reported heat input and the primary fuel type (by year) that was reported to EPA in the unit's Acid Rain Program monitoring plan. For units that reported coal as their primary fuel for the year, EPA did not adjust their heat input. For units reporting oil as their primary fuel, EPA multiplied their heat input by 0.6. If the primary fuel was not coal or oil, the heat input for the year was multiplied by 0.4.

For some units, the use of the primary fuel type to identify the appropriate CAIR fuel adjustment factor may not yield the same result as using the CAIR FIP definition of ''coal-fired'' or ''oil-fired'' to identify the appropriate factor. Under the CAIR FIP, a coal-fired unit is a unit which burns any amount of coal in a year, and an oil-fired unit is a unit which had more than 15% of its yearly heat input from oil and burned no coal. The use of primary fuel type will not match the CAIR FIP definition in cases where coal was burned in a year, but was not listed as the primary fuel, or when more than 15% of a year's heat input was from oil, but oil was not listed as the primary fuel. EPA used the primary fuel type, as a surrogate for the data necessary to apply the terms ''coal-fired'' and ''oil-fired'', because under the Acid Rain Program, more detailed fuel use data are reported only for units using non-continuous emission monitoring methods. Because of this limitation on the data used by EPA, the fuel-adjusted heat input calculated for some units may be lower than if the calculation were based on more precise data. Owners and operators were asked to provide, in response to the August 4, 2006 NODA, any available, more precise data on fuel use. Fuel type objections and EPA's response are described in the Response to Objections document. EPA accepted the fuel type objections to the fuel determinations based on monitoring plan data in the preliminary NODA.

C. Annual and Ozone Season Fuel Heat Input Data for Non-Acid Rain Units

EIA data, as well as Federal Energy Regulatory Commission (FERC) form 423 data, were used to calculate annual and ozone season fuel-adjusted heat input for non-Acid Rain units.[3]

The data sources and calculation methods vary by the type of unit and data year. The EIA and FERC databases that were used were downloaded in October 2005 and are available on EIA's Web site at *http://www.eia.doe.gov/cneaf/electricity/page/data.html*.

For the August 4, 2006 NODA inventory, we also replaced the calculated ozone season heat input data with data reported to EPA under the OTC NO_X Budget Program and the NO_X SIP Call NO_X Budget Trading Program, if available. For the final inventory, based on objections received, we also replaced the calculated annual values with data reported to EPA for a full twelve months under the OTC NO_X Budget Program and the NO_X SIP Call NO_X Budget Trading Program.[4] The reported heat input was used in conjunction with information regarding the primary fuel for the year (reported in the monitoring plan) to calculate the fuel-adjusted heat input.

In addition, EPA also utilized information provided as part of the CAIR rulemaking process. More specifically, EPA used annual heat input data submitted in response to EPA's Supplemental CAIR Proposal published in the **Federal Register** on June 10, 2004.

Boilers

For 2000, fuel-adjusted annual and ozone season heat input were calculated for each utility boiler based on EIA form 767 monthly fuel use and heat content data. The fuel-adjusted 2000 annual heat input was calculated at the plant level for non-utility boilers based on EIA form 860b data. The fuel usage and heat content information in EIA form 860b is reported at the plant level, so the fuel-adjusted heat input was first calculated for the plant and then apportioned equally to each boiler (at the plant) that is a potential CAIR unit. The ozone season heat input for non-utility boilers was based on multiplying the annual heat input by the fraction of the five ozone-season months to 12 annual months (5/12).[5]

Beginning in 2001, both utility and non-utility boilers reported using EIA form 767, so fuel-adjusted heat input was calculated for each boiler based on monthly fuel usage and heat content data from that EIA form for the 2001 through 2004 period.

Although data for 2000 was developed as described above, EPA decided not to use the 2000 data in certain cases, i.e., where a plant included both existing potential CAIR units and existing units that are not treated as potential CAIR units. Since in those cases the 2000 unit level heat input could not be determined for existing potential CAIR units alone without attributing to them heat input that actually may be for units that are not potential CAIR units and this additional heat input could be significant, EPA decided, in those cases, to exclude the 2000 heat input data and use the average of the three highest annual heat input values during 2001

[3] In some cases, heat input information was not available for all or a portion of the baseline period. It was not clear whether this was the result of a unit not operating or a unit failing to report its operations. A zero value was applied for heat input in these cases. This may have resulted in an incorrect baseline heat input for the unit involved.

[4] Initially EPA did not use data reported under the NO_X Budget programs for non-Acid Rain units. Some units only report ozone season quarters, and therefore the heat input for these reflect less than a full year's operation.

[5] Plants that were sold in 2000 and changed status from utility to non-utility sometimes reported using both the utility and non-utility forms for that year. To avoid double counting of heat input in these cases, EPA used only the data from utility form or the data from the non-utility form for the plant, whichever set of data resulted in the higher heat input for the plant.

through 2004 in calculating NO_X allowance allocations. In any case where the use of unit level data (for 2000 or for any other relevant period) will affect the calculation of the baseline heat input of a unit, the owners and operators of the unit were given the opportunity to provide EPA, in response to the preliminary NODA, the unit level data.

Simple Combustion Turbines and Combined Cycle Units at Non-Acid Rain Plants

The following procedures were used for simple combustion turbines and combined cycle units at non-Acid Rain plants, which include certain utility and non-utility plants.[6] For 2000, data from the EIA form 860b was used to calculate simple combustion turbine and combined cycle unit fuel-adjusted heat input for the non-utility plants in a similar manner as the 2000 non-utility boiler calculation. Annual fuel-adjusted heat input was calculated at the plant level. Data from the EIA form 759 and FERC form 423 were used to calculate simple combustion turbine and combined cycle heat input for the utility plants. The EIA form 759 provided monthly fuel usage at the prime mover level (simple combustion turbine, combined cycle combustion turbine, and combined cycle steam turbine), and the FERC form 423 provided gaseous and liquid fuel heat content for the plants. The prime mover fuel-adjusted heat input for the plant was apportioned equally to each potential CAIR unit at the plant by prime mover type (with combined cycle combustion turbine and steam turbine heat inputs combined to provide a single combined cycle heat input). To the extent the plant includes both potential CAIR units and units that are not treated as potential CAIR units, this approach may have resulted in calculated heat input values exceeding the actual heat input for the potential CAIR units. Unlike the boiler data, that required apportioning plant level data only for 2000, combustion turbine EIA data are only available at the plant level for all of the years. Therefore the approach taken for boilers, i.e., exclusion of a year of plant level data when that data may be impacted by units not subject to CAIR, was not available. In any case where the use of unit level data (for 2000 or for any other relevant period) will affect calculation of the baseline heat input of a unit, the owners and operators were given the opportunity to provide to the EPA, in response to the preliminary NODA in 2006, the unit level data. Ozone-season heat input was calculated based on the 5/12 fraction of ozone-season months to annual months.

In 2001 the EIA form 759 was renamed as form 906, with separate similar versions for non-utility and utility plant prime mover level fuel usage. Data for the non-utility and utility plants from these forms were combined with the FERC form 423 heat content data to calculate prime mover level fuel-adjusted heat input. This prime mover level annual and ozone season heat input was then apportioned equally to each simple combustion turbine or combined cycle turbine (at the plant) that is a potential CAIR unit by prime mover type as described earlier for the 2000 utility units.

EIA combined the utility and non-utility reporting forms in 2002 and changed the format. The EIA form 906 for 2002 through 2004 provided both fuel usage and fuel heat input on a monthly basis. The annual and ozone season fuel-adjusted heat input was totaled for each of the non-utility and utility plants at the prime mover level and then apportioned equally to each potential CAIR unit at the plant, as described above for the 2000 and 2001 EIA form 759 and 906 data.

Non-Acid Rain Simple Combustion Turbines at Acid Rain Plants

The fuel-adjusted heat inputs for non-Acid Rain simple combustion turbines located at Acid Rain plants with no Acid Rain combustion turbines were calculated and apportioned in a similar manner as described above for simple combustion turbines and combined cycle units at non-Acid Rain plants.

Heat inputs, however, for non-Acid Rain combustion turbines located at plants with Acid Rain combustion turbines had to be calculated in a different manner in order to not double count heat input. At these plants the plant or prime mover level heat input, calculated with EIA data as described above, included heat input from both the non-Acid Rain and Acid Rain turbines. Since the baseline heat input for the Acid Rain turbines at the plant was taken from data reported to EPA under the Acid Rain Program, the Acid Rain data was subtracted from the total EIA-based combustion turbine and combined cycle heat input. The remaining fuel-adjusted heat input was then apportioned equally to each of the non-Acid Rain turbines. In some cases the difference between EIA and Acid Rain heat input was zero or even negative resulting in zero heat input for the non-Acid Rain units.

Heat input and fuel type objections received in response to the August 4, 2006 NODA, and EPA's response concerning whether to modify the baseline heat input, are described in the Response to Objections Document. EPA accepted objections that provided unit level data for units for which EPA has relied on plant level EIA data. EPA also accepted objections for units for which EPA had used unit level EIA data, if the objector identified that it had notified EIA of data issues. EPA also accepted heat input objections if the source provided an objection with new heat input data and an explanation of why the newly submitted data constituted best available data. Also some objectors had pointed out an error in EPA's calculation of 2002 through 2004 ozone season boiler heat input that were based on EIA form 767 data. EPA corrected the calculation error and has revised the EIA based ozone season heat input for those years.

5. How Do I Interpret the Data Tables Presented Through This NODA?

This section provides a brief description of the types of data included in each table of this NODA. A more detailed description of the data tables may be found in the TSD titled ''Data Field Description for the Final CAIR FIP NO_X Annual and NO_X Ozone-season Allocation Tables'', which is available in the docket and on the Web site mentioned in Section 8. The CAIR Annual and Ozone Season NO_X Allocation tables were created primarily using data reported to EPA (under the Acid Rain Program) and the EIA. For a number of units, annual and ozone season allocations were based on heat input and fuel information provided in response to the August 4, 2006 NODA. In addition, for a small number of non-Acid Rain units, annual allocations incorporated heat input information provided by the source owner or operator in response to EPA's June 10, 2004 Supplemental CAIR Proposal.

Tables 1 and 2 contain the annual and ozone season unit NO_X allowance allocations and the baseline heat input. Tables 3, 4, 5, and 6 contain the EIA, EPA, and objector data regarding heat input and primary fuel used to calculate the annual allocations. Tables 7, 8, and 9 contain additional EIA, EPA, and objector data used to calculate ozone season allocations.

Some units (i.e., units not reporting under the Acid Rain Program, OTC NO_X Budget Program, or NO_X SIP Call NO_X Budget Trading Program during a portion of the baseline period) use heat input data available from both EIA and EPA to compile the baseline heat input. For these units the EIA annual heat input data are used until the first full

[6] *See* note 2.

year of Acid Rain Program or NO_X Budget Program data are available. Ozone season heat inputs used for the ozone season allocation are from the data reported under the Acid Rain Program, OTC NO_X Budget Program, and NO_X SIP Call NO_X Budget Trading Program, if available, in Table 8. Otherwise EIA data in Table 7 or source-provided data in Table 9 were used.

6. Is the EPA Requesting Objections to These Data?

EPA is not requesting objections to the data in the data tables in this NODA. This action constitutes a final action for determining the CAIR FIP NO_X allowance allocations for existing units for 2009–2014.

7. What Data Is the EPA Making Available?

EPA has used the best data currently available to develop an inventory of existing units that currently are potentially covered by the CAIR FIPs and to calculate each existing unit's allowance allocations for 2009 through 2014. Through the NODA, EPA is making available to the public, including unit owners and operators, the data used in developing the inventory of potential existing CAIR units, the heat input and fuel type data and resulting baseline heat inputs used in the allocation calculations, and the allocations resulting from such calculations.

As discussed above, the inventory of existing potential CAIR units, and the data on which the inventory is based, are final for purposes of determining what units should be allocated allowances in this NODA and are not final for purposes of future NODAs concerning future allocations and for purposes of determining whether a unit is subject to the requirements of the CAIR FIPs.[7] Further, the heat input and fuel type data and resulting baseline heat inputs used in this NODA are final for purposes of determining CAIR NO_X FIP allowances for 2009–2014. EPA intends to use, for the units in the inventory in this NODA, these data (including the baseline heat inputs) in calculating allocations in future NODA addressing future years. These data include: EPA heat input and fuel type data under the Acid Rain Program for the years 2000 through 2004, under the NO_X Budget Program (NBP) for 2000 through 2002 for Ozone Transport Commission (OTC) units, and under the NO_X Budget Trading Program for 2003 and 2004 for units under the NO_X SIP Call; and heat input and fuel data obtained in EIA databases for units that are not under these programs. The 2009–2014 allocations in the NODA, calculated using these data, are also final.

In particular, this action makes available to the public: NO_X annual and NO_X ozone season allocations for individual units in CAIR States for the FIP; the adjusted heat input values for each unit for 2000 through 2004; the baseline heat inputs used to calculate the allocations; the other data used to include units in, or exclude units from, the inventory of existing potential CAIR units for which allocations are calculated; and objector data received during the objection period that were used in the final inventory and allowance determinations for units.

In particular, EPA is making the following data available:

- EIA Annual Heat Input: EIA data were used to obtain heat input and fuel type data for those units that are subject to the CAIR rule, but are not reporting annually under the Acid Rain Program, OTC NO_X Budget Program, or the NO_X SIP Call NO_X Budget Trading Program.
- EIA Ozone Season Heat Input.
- EPA Acid Rain Program Annual Heat Input.
- EPA Acid Rain Program, OTC NO_X Budget Program, and NO_X SIP Call NO_X Budget Trading Program Ozone Season Heat Input.
- Unit NO_X Annual Allowance Allocation Table.
- Unit NO_X Ozone Season Allocation Table.
- Objector data that were used in inventory and the final allocations.

8. Where Can I Get the Data Discussed in This NODA?

Tables 1 through 9, which include the allowance allocations, baseline heat input, adjusted heat input, and fuel type data, are available in an Excel file titled ''Final Data for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs (2009 through 2014 allowance allocations) on the CAMD Web site at *http://www.epa.gov/airmarkets/cair/NODA.* The ''NODA'' link will open a Web page which contains this excel file, along with the NODA, Technical Support Document, Response to Objections Document, and copies of the applicability determinations made in connection with this NODA in PDF format. The NODA is titled ''Final Notice of Data Availability for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Program (2009 through 2014 allowance allocations).'' The TSD is titled ''Data Field Description for the CAIR FIP NO_X Annual and NO_X Ozone Season Allocation Tables (2009 through 2014 allowance allocations).'' The Response to Objections document is titled ''Response to the Objections for the Notice of Data Availability (NODA), Proposed Allocation of NO_X Allowances under the Clean Air Interstate Rule (CAIR) Federal Implementation Plan (FIP).'' In addition, these files are in the CAIR FIP Docket (Docket ID no. EPA–HQ–OAR–2004–0076).

Other data used in developing the inventory of potential existing CAIR units can be found on the EIA Web site through the link given in section 4 of this NODA.

Dated October 25, 2007.

Brian McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E7–21603 Filed 11–1–07; 8:45 am]

BILLING CODE 6560–50–P

[7] *See* note 1.

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, November 5, 2007, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Memorandum and resolution re: Amendments to FDIC Rules and Regulations Relating to Suspension, Removal, and Prohibition in the Case of Certain Criminal Offenses and Rules and Regulations Applicable to Proceedings Relating to Cease-and-Desist Orders.

Discussion Agenda

Memorandum and resolution re: Final Rule regarding Risk-Based Capital Standards: Advanced Capital Adequacy Framework.

Memorandum and resolution re: Interagency Notice of Proposed Rulemaking Relating to the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies and

Consumers' Right to Dispute Inaccurate Information Provided to Credit Reporting Agencies.

Memorandum and resolution re: Designated Reserve Ratio for 2008.

Memorandum re: Assessment Rates for 2008.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: October 29, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–21544 Filed 11–1–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2007.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Goppert Financial Corp.; to acquire 100 percent of the voting shares of Kanbanc, Inc., both of Overland Park, Kansas, and thereby indirectly acquire voting shares of Citizens State Bank of Pomona, Pomona, Kansas; Citizens Bank of Norborne, Norborne, Missouri; and Farmers National Bank of Kansas, Walnut, Kansas.

Applicant also has applied to acquire up to 100 percent of the voting shares of The Lathrop Bank, Lathrop, Missouri, and The Pleasant Hill Bank, Pleasant Hill, Missouri.

Board of Governors of the Federal Reserve System, October 30, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–21572 Filed 11–1–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Seaway Bancshares, Inc., Chicago, Illinois; to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. State Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Lighthouse1 LLC, Minneapolis, Minnesota, and thereby engage in data processing activities, pursuant to section 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, October 30, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–21573 Filed 11–1–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse And Alcoholism; 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Conference Grant Applications (R13/U13).

Date: November 27, 2007.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, 3039, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Branch Review, National Institute On Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5441 Filed 11–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Cross-disciplinary Training in the Language Science of Billingualism.

Date: November 27, 2007.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5442 Filed 11–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 materials, 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 General Medical Sciences Special Emphasis Panel, R13 Conference Grant Applications.

Date: November 26, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Margaret Weidman, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5443 Filed 11–1–07; 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, Neurogenetics/Genomics.

Date: November 14, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology.

Date: November 15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pathology Member Conflicts.

Date: November 16, 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 20892. (Telephone Conference Call).

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomaterials and Tissue Engineering.

Date: December 4–5, 2007.

Time: 6 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, (301) 435–2902, *gubina@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 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5444 Filed 11–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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 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: Access to Recovery (ATR) Program (OMB No. 0930–0266)—Revision

The Center for Substance Abuse Treatment (CSAT) is charged with implementing the Access to Recovery (ATR) program which will allow grantees (States, Territories, the District of Columbia and Tribal Organizations) a means to implement voucher programs for substance abuse clinical treatment and recovery support services. The ATR program is part of a Presidential initiative to: (1) Provide client choice among substance abuse clinical treatment and recovery support service providers, (2) expand access to a comprehensive array of clinical treatment and recovery support options (including faith-based programmatic options), and (3) increase substance abuse treatment capacity. Monitoring outcomes, tracking costs, and preventing waste, fraud and abuse to ensure accountability and effectiveness in the use of Federal funds are also important elements of the ATR program. Grantees, as a contingency of their award, are responsible for collecting data from their clients at intake, discharge, and follow-up (at six months post intake).

The primary purpose of this data collection activity is to meet the reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. The following table is an estimated annual response burden for this effort.

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]

Center/form/respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Added burden proportion [2]	Total annual burden hours
CSAT GPRA Client Outcome Measures for Access to Recovery Programs							
Clients:							
Adults	53,333	3	160,000	.33	52,800	.33	17,424
Client Subtotal	53,333		160,000				17,424
Data Extract: [3]							
Adult Records	53,333	3	160,000	.16	25,600		25,600
Data Extract Subtotal.	53,333		160,000				25,600
Upload [4]	24 grants		160,000	1 hr. per 6,000 records.	27		27
Upload Subtotal	24 grants		160,000				27
ATR Voucher Information and Voucher Transaction							
Voucher information and transaction.	53,333	1.5	80,000	.03	2,400		2,400

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]—Continued

Center/form/respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Added burden proportion [2]	Total annual burden hours
Voucher information and transaction Subtotal.	53,333	.....	80,000	.....	.....	.....	2,400
Subtotal	160,000	.....	480,000	.....	.....	.....	45,451
Total	160,000	.....	480,000	.....	.....	.....	45,451

Notes:
[1] This table represents the maximum additional burden if adult respondents provide three sets of responses/data.
[2] Added burden proportion is an adjustment reflecting customary and usual business practices programs engage in (e.g., they already collect the data items).
[3] Data Extract: Grant burden for capturing customary and usual data.
[4] Upload: All ATR grants upload data.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 AND e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: October 29, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–21583 Filed 11–1–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710/800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180, (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 , (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E7–21489 Filed 11–1–07; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0028]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to the safety of navigation. The meeting will be open to the public.

DATES: NAVSAC will meet on Tuesday, December 04, 2007, from 1 p.m. to 4 p.m.; Wednesday, December 05, 2007, from 8:30 a.m. to 4 p.m.; and Thursday, December 06, 2007 from 8:30 a.m. to 11:30 a.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 20, 2007. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before November 20, 2007.

ADDRESSES: NAVSAC will meet in the Phoenix Park Hotel, 520 N. Capitol Street, NW., Washington, DC 20001. Send written material and requests to make oral presentations to Mr. John Bobb, Commandant (CG–54121), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on our online docket, USCG–2007–0028 at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Sollosi, Executive Director of NAVSAC, or Mr. John Bobb, Assistant to the Executive Director, telephone 202–372–1532, fax 202–372–1929 or e-mail at *john.k.bobb@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–493).

Agenda of Meeting

The agenda for the December 4–6, 2007 NAVSAC meeting is as follows:

(1) Introduction and swearing-in of new members.

(2) VTS Program.

(3) Navigation Subcommittee Report.

(4) NOAA Update.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than November 20, 2007. Written material for distribution at the meeting should reach the Coast Guard no later than November 20, 2007. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 20 copies to the Executive Director no later than November 20, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: October 29, 2007.

Wayne A. Muilenburg,

Captain, U.S. Coast Guard, Office of Waterways Management.

[FR Doc. E7–21588 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1731–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1731–DR), dated October 24, 2007, and related determinations.

DATES: *Effective Date:* October 24, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 24, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of California resulting from wildfires beginning on October 21, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–21591 Filed 11–1–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3279–EM]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3279–EM), dated October 23, 2007, and related determinations.

EFFECTIVE DATE: October 23, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 23, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of California resulting from wildfires beginning on October 21, 2007, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of California have been designated as adversely affected by this declared emergency:

Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–21592 Filed 11–1–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5142–N–02]

Notice of Funding Opportunity (NOFA) for the Brownfields Economic Development Initiative for Fiscal Year 2007 Extension of Application Deadline

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA); notice of extension of application deadline.

SUMMARY: On September 24, 2007, HUD published its NOFA for the Brownfields Economic Development Initiative. Because the initial deadline falls on December 24, 2007, a day on or near a holiday, HUD has determined to extend the deadline.

DATES: The application deadline date for the BEDI NOFA competition is December 28, 2007 at 11:59:59 p.m.

FOR FURTHER INFORMATION CONTACT: David Kaminsky, Office of Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7212, Washington, DC 20410–7000; telephone 202–402–4612 (this is not a toll-free number). Persons with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Income Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On September 24, 2007, HUD published its NOFA for the Brownfields Economic Development Initiative (BEDI) for Fiscal Year 2007 (72 FR 54324). The competition was stated to close on December 24, 2007. In order to avoid any problems or added difficulties that might arise from the close date falling on or near a holiday, HUD has determined to extend the deadline date by three days, to December 28, 2007, in order to facilitate the application process. Extending the deadline date will also permit applicants to have an additional three days to obtain assistance from the Grants.gov desk help at 800–518–GRANTS (this is a toll free number).

Potential applicants are advised that the provisions of the BEDI NOFA that discuss timely receipt of applications continue to apply. Specifically, section IV.F. of the BEDI NOFA (72 FR 54330) provides that all applications must be received and validated by Grants.gov; or received no later than 11:59:59 on the deadline date. In order to ensure timely receipt, HUD strongly recommends applicants submit their electronic applications 48–72 hours prior to the deadline to ensure the application validation is processed prior to the deadline.

Dated: October 23, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7–21558 Filed 11–1–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 2, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 25, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 07–5386 Filed 11–1–07; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4966–N–05]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of Appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Bryan A. Greene, James M. Martin, Jean Lin Pao, and Robert W. Young as members; and Camille E. Acevedo and Jon L. Gant as alternate members of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 708–1381. (This is not a toll-free number.)

Dated: October 26, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–21618 Filed 11–1–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, November 9, 2007—1:30 p.m. to 4 p.m.

ADDRESSES: Emrick Technology Center, 2750 Hugh Moore Park Road, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 2750 Hugh Moore Park Road, Easton, PA 18042, (610) 923–3548.

Dated: October 29, 2007.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 07–5451 Filed 11–1–07; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before December 3, 2007.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–166070

Applicant: Hugo Stolte IV, San Antonio, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chryoparia*) within Texas.

Permit TE–165220

Applicant: Donald Hockaday, South Padre Island, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species: leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's Ridley sea turtle (*Lepidochelys kempii*), and loggerhead sea turtle (*Caretta caretta*) within Texas.

Permit TE–069848

Applicant: Ross Rasmussen, Plano, Texas.

Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys for black capped-vireo (*Vireo atricapilla*) within Oklahoma.

Permit No. TE–163400

Applicant: Joseph Bidwell, Oklahoma State University, Stillwater, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for Neosho madtom (*Notutus placidus*) within Oklahoma.

Permit No. TE–046517

Applicant: USGS New Mexico Cooperative Fish and Wildlife Research Unit, Las Cruces, New Mexico.

Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys for Bonytail chub (*Gila elegans*) within New Mexico.

Permit No. TE–166250

Applicant: Miami University, Oxford, Ohio.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and collection for Noel's Amphipod (*Gammarus desperatus*), Koster's Springsnail (*Juturnia kosteri*), and Roswell Springsnail (*Pyrgulopsis roswellensis*) within New Mexico.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 12, 2007.

Christopher T. Jones,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E7–21584 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coyote Springs Investment Multi-Species Habitat Conservation Plan, Clark County and Lincoln County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice announces the availability of the draft Coyote Springs Investment Multi-Species Habitat Conservation Plan (Plan), draft Implementing Agreement (IA), and draft Environmental Impact Statement (EIS) for public review and comment. In response to receipt of an application from Coyote Springs Investment LLC (CSI; Applicant), we, the Fish and Wildlife Service (Service), are considering the proposed action of issuing a 40-year permit for five species. The proposed permit would authorize the take of individual species listed under the Federal Endangered Species Act of 1973, as amended (Act). The permit is needed because take of species could occur during proposed urban development activities located in a 21,454-acre area in southern Lincoln County, Nevada. In addition, take of species could occur during recreational and resource management activities within the 13,767-acre proposed Coyote Springs Resource Management Area (CSRMA), an area leased by the Applicant from the U.S. Bureau of Land Management (BLM), which would be managed for the conservation of the desert tortoise (*Gopherus agassizii*) and other covered species pending BLM approval, located in Clark and Lincoln counties, Nevada.

DATES: Written comments must be received by 5 p.m. on January 2, 2008.

ADDRESSES: Comments should be addressed to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502–7147, fax number (775) 861–6301.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, telephone (702) 515–5230 and fax number (702) 515–5231.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the draft Plan, draft IA and draft EIS are available for public review during regular business hours from 9 a.m. to 5 p.m. at the Nevada Fish and Wildlife Office in Las Vegas (see **FOR FURTHER INFORMATION CONTACT**). Individuals wishing copies of the draft Plan, draft IA, and draft EIS should contact the Service by telephone (see **FOR FURTHER INFORMATION CONTACT**) or by letter (see **ADDRESSES**). These documents also are available on the Nevada Fish and Wildlife Office Web site at *http://www.fws.gov/nevada/highlights/comment/public_comment.html.*

Background Information

Section 9 of the Federal ESA of 1973, as amended, and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Under limited circumstances, we may issue permits to authorize incidental take of listed fish or wildlife; i.e., take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Although take of listed plant species is not prohibited under the Federal ESA, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. All species included on an incidental take permit would receive assurances under the Services ''No Surprises'' regulation 50 CFR 17.22(b)(5) and 17.32(b)(5).

We have received an application for an incidental take permit for implementation of the Coyote Springs Investment Multi-Species Habitat Conservation Plan. The application has been prepared and submitted by Coyote Springs Investment LLC (Applicant). The Applicant has prepared the Plan to satisfy the application requirements for a section 10(a)(1)(B) permit under the Federal ESA, of 1973, as amended.

The Applicant seeks a 40-year incidental take permit for covered activities within a proposed 21,454-acre development area located in southern Lincoln County, Nevada. The development area extends approximately 9 miles north of the Lincoln County-Clark County line. The Plan also would cover approximately 13,767 acres of land leased from the BLM (approximately 7,548 acres) in Lincoln County and (approximately 6,219 acres) in Clark County. The leased lands would be managed for the conservation of the desert tortoise and other covered species pending BLM approval, and designated as the Coyote Springs Resource Management Area (CSRMA).

Land leased and owned by the Applicant occupies most of the eastern portion of Coyote Spring Valley straddling the Pahranagat Wash and the Kane Springs Wash in Lincoln County. This area is bordered by the Delamar Mountains to the north, the Meadow Valley Mountains to the east, and U.S. Highway 93 to the west. The leased land in Clark County is bordered by State Route 168 to the south. The surrounding land is primarily owned by the United States and is managed by either the BLM or Service. South of the development area, CSI privately-owned lands are being developed in Clark County and are covered under the existing Clark County Multi-Species Habitat Conservation Plan.

The Applicant has requested a permit for five animal species, two of which are currently listed as threatened or endangered under the Federal ESA. Proposed covered species include two animal species, the federally listed as threatened desert tortoise (Mojave population) and endangered Moapa dace (*Moapa coriacea*). Proposed covered species also include three animal species that are not listed under the Federal ESA at the current time: banded Gila monster (*Heloderma suspectum cinctum*), Virgin River chub (*Gila seminuda*) (Muddy River population), and the Western burrowing owl (*Athene cunicularia hypugea*).

If the proposed Plan is approved and the permit issued, take authorization of covered listed species would be effective at the time of permit issuance. Take of the currently non-listed covered species would be authorized concurrent with the species' listing under the Federal ESA, should they be listed during the duration of the permit.

The proposed Plan is intended to be a comprehensive document, providing for regional species conservation and habitat planning, while allowing the applicant to better manage growth of the proposed community, as development build-out would be phased in over time. The proposed Plan also is intended to provide a coordinated process for permitting and mitigating the take of covered species as an alternative to a project-by-project approach.

In order to comply with the requirements of the Federal ESA, the proposed Plan addresses a number of required elements, including: species and habitat goals and objectives; evaluation of the effects of covered activities on covered species, including indirect and cumulative effects; a conservation strategy; a monitoring and adaptive management program; descriptions of changed circumstances and remedial measures; identification of funding sources; and an assessment of alternatives to take of listed species.

The proposed development would be phased over a number of years. Up to 2,000 acres would be developed for the first eight years. A report would be due every two years that included an assessment of the level of take in relation to the amount requested in the Plan, and the implementation of conservation measures as outlined in the Plan. Every ten years until the expiration of the permit, a comprehensive assessment would be conducted of the expected effects to covered species and implementation of existing conservation measures. If the expected potential effects to covered species are significantly greater than the level assessed in the Plan, the Service will notify the Applicant of the need to implement additional conservation measures.

Proposed covered activities and projects within the Plan fall within six categories: community development and construction activities; recreational facilities and open space; utility infrastructure; water supply infrastructure; flood control structures development and maintenance (including stormwater management); and resource management features.

The Plan's conservation strategy was designed to minimize and mitigate the impacts of covered activities, contribute to the recovery of listed covered species, and protect and enhance populations of non-listed covered species, as proposed. The proposed conservation strategy provides for the establishment of the CSRMA on approximately 13,767 acres of leased land by the Applicant from the BLM (99-year lease with an automatic 99-year extension) in Clark and Lincoln counties. The proposed CSRMA would be managed for the conservation of the desert tortoise and other covered species. The CSRMA would also serve to achieve other complementary goals such as creation and use of walking and equestrian trails and a site to conduct research of covered species, as long as the primary biological goals of the Plan are met and not compromised. Other conservation measures include: (1) Develop and implement a long-term protection plan for the Moapa dace and Virgin River chub and secure associated funding for implementation of the plan; (2) payment of mitigation fees, based on a $800 per acre of disturbance, for the development of private land which would be used to fund research on the covered species and management of the CSRMA, and other mitigation measures as described in the Plan; and (3) creation of a wash buffer zone easement within the development area.

National Environmental Policy Act Compliance

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA). As lead agency, the Service has prepared a draft EIS which analyzes alternatives associated with issuance of the Permit. The draft EIS also addresses issuance of a section 404 permit under the Clean Water Act by the U.S. Corps of Engineers (Corps) for the proposed urban development on 21,454-acre land and development of flood control facilities on approximately 3,331 acres of the utility corridor on BLM land west of U.S. Highway 93. The proposed flood control facilities on BLM-administered land is not included as a covered activity in the Plan but would be subject to a section 7 formal consultation under ESA. In addition, the draft EIS addresses the BLM's reconfiguration of the land holdings, the creation of the CSRMA, and, in consultation with the Service, entering into a management agreement with the Applicant covering the CSRMA. Cooperating agencies to the draft EIS include the Corps, BLM, and the U.S. Environmental Protection Agency.

The draft EIS analyzes three alternatives including the proposed Plan, described above. The proposed Plan is considered the Preferred Alternative (Restricted and Phased Development of a New Town Consisting of a Planned Community with Resource Management Features). Two other alternatives being considered by the Service include the following:

No Action Alternative: Under the No Action Alternative, the Service would not issue an incidental take permit for implementation of the Coyote Springs Investment Multi-Species Habitat Conservation Plan in Clark and Lincoln counties, Nevada. As a result, the Applicant's private lands in Lincoln

County would likely be sold to individual landowners, who would be responsible for obtaining individual incidental take permits pursuant to section 10 under ESA and individual section 404 permits under the Clean Water Act. Leased lands would remain an island within the privately-owned land. Land leased by CSI from BLM in Lincoln County (7,548 acres) would continue to be available for the full suite of activities authorized in the Land Lease Agreement.

Alternative 1—Full and Immediate Development of a New Town Consisting of a Planned Community without Resource Management Features: This alternative would result in the issuance of an incidental take permit pursuant to section 10 of the ESA by the Service and a section 404 permit under the Clean Water Act by the Corps that would allow development of the entire CSI-owned private and leased lands in Lincoln County. The Applicant's private land would be available for development, while lands leased by the Applicant from BLM would be available for activities specified in the Land Lease Agreement. All land owned and leased by the Applicant would be available for development activities immediately upon issuance of an incidental take permit and other required regulatory permits.

Public Involvement

A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** for this project on December 4, 2001 (66 FR 63065). The Plan described in the 2001 NOI included privately-owned, developable lands and leased land in Lincoln and Clark counties, Nevada. A second notice was published on September 12, 2006 (71 FR 53704) because the amount of land included in the Plan was modified. The Plan described in the second NOI includes private, developable lands in Lincoln County only, as well as leased land to be used for conservation in Clark and Lincoln counties. Public scoping meetings were held on September 26 and 27, 2006, in Alamo and Moapa, Nevada, respectively. A NOI to reopen the public comment period and to correct inaccurate contact information provided in the September 12, 2006 notice was published on November 2, 2006 (71 FR 64555).

Public Comments

The Service and Applicant invite the public to comment on the draft Plan, draft IA, and draft EIS during a 60-day public comment period beginning on the date of this notice. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Service will evaluate the application, associated documents, and comments submitted to them to prepare a final EIS. A permit decision will be made no sooner than 30 days after the publication of the final EIS and completion of the Record of Decision.

This notice is provided pursuant to section 10(a) of the Federal ESA and Service regulations for implementing NEPA, as amended (40 CFR 1506.6).

Dated: October 17, 2007.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. E7–21504 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Interagency Florida Panther Response Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: plan and environmental assessment (EA); request for public comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce an EA for our Interagency Florida Panther Response Plan. Our EA considers alternatives for managing conflicts between humans and the endangered Florida panther (*Puma concolor coryi*).

DATES: We must receive any written comments on the EA at the Service's Field or Regional Office (see **ADDRESSES**) on or before December 3, 2007.

ADDRESSES: Layne Hamilton, Refuge Manager, Florida Panther and Ten Thousand Islands National Wildlife Refuges, 3860 Tollgate Blvd., Suite 300, Naples, FL 34114, or Southeast Regional Office, Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, GA 30345 (*Attn:* Elizabeth Souheaver).

FOR FURTHER INFORMATION CONTACT: Ms. Layne Hamilton, Refuge Manager, Florida Panther and Ten Thousand Islands National Wildlife Refuges (see **ADDRESSES**), at 239/353–8442, extension 227 (telephone), or Ms. Elizabeth Souheaver, Area IV Supervisor (see **ADDRESSES**), at 404/679–7163 (telephone) or 404/679–4082 (facsimile). For information on how to request documents for review or to submit your comments, see ''Public Document Review and Comment.''

SUPPLEMENTARY INFORMATION: We announce an EA for our Interagency Florida Panther Response Plan. Our EA considers alternatives for managing conflicts between humans and the endangered Florida panther (*Puma concolor coryi*). One of the rarest large mammals in the United States, this species is protected as endangered under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*; Act), and Florida statutes. Because of the panther's potential for extinction, conflicts with humans raise issues that require careful consideration and action to conserve the species and protect the public.

Florida panthers occur primarily in southern Florida, with most individuals residing south of Lake Okeechobee. Recovery actions over the past 25 years, particularly genetic augmentation initiated in 1995, enabled the population to grow from 30–50 animals in 1995 to 80–100 animals in 2005. At the same time, the human population of Collier County, where most panthers reside, more than doubled in 14 years (1990–2004), from 152,000 to 306,000. Because of increases in numbers of both people and panthers, urban-suburban areas now interface with panther habitat, increasing the possibility of human-panther interactions. Management guidelines are needed to provide more definitive guidance to respond and manage panther and human interactions and to educate the public about appropriate behavior when living and recreating in panther habitat.

In accordance with mandates established under the National Environmental Policy Act (NEPA), we are required to consider a full range of reasonable alternatives for addressing and responding to major public issues, management concerns, and resource conservation opportunities associated with issues arising from human-panther interactions.

We analyzed three alternatives. Alternative A (Preferred Action) proposes managing human-panther interactions with an interagency response team and an established plan that prioritizes public safety and evaluates each situation by analyzing panther behavior and human activity. Alternative B (No Action) does not utilize an interagency team or a response plan, but responds to human-panther interactions on a case-by-case

basis without established protocols or guidelines. Alternative C includes a response team and plan that differs from Alternative A by providing rigid protocols based on frequency of panther sightings and proximity to human-occupied structures, without considering panther behavior or influences of human activity on panther behavior.

We have coordinated this proposal with the National Park Service, Florida Fish and Wildlife Conservation Commission, and local Indian tribes. We announced the availability of our draft EA in the May 25, 2006, **Federal Register** (71 FR 30156). We invited the public to submit written comments on the draft guidelines and response plan by July 24, 2006. Additionally, to improve the quality and credibility of the scientific information, we conducted a formal peer review process for the draft plan. The Florida Fish and Wildlife Conservation Commission, NPS, Miccosukee Tribe of Indians of Florida, Seminole Indian Tribe, and the Service provided lists of possible peer reviewers, from which we selected six peer reviewers. All but one peer reviewer provided comments. We received five letters from the public and/or environmental community and one letter from a tribe. We have included responses to specific comments in the EA appendices.

Tribal and public comments; peer reviews; and discussions between us, the Florida Fish and Wildlife Commission, and NPS helped us identify several issues and concerns. Our revisions to the EA and plan include the following: (1) Discussion of cultural resource impacts to the local tribes; (2) elimination of the first two chapters of the Response Plan (Chapter 1: Florida Panther—Status, Biology and Recovery; Chapter 2: Living with Florida Panthers); (3) reorganization of the plan to reduce redundancy and clarify management actions; (4) separation of the section on depredation from the other human-panther interaction classifications (sighting(s), encounter(s), incidents, threat, attack), because depredations are distinctly different from direct human-panther interactions; and (5) inclusion of risk factor with each classification.

Public Document Review and Comment

If you wish to review the EA, you may obtain a copy on the Internet at *http://www.fws.gov/verobeach.* You may also obtain a copy by writing the Service's Southeast Regional Office in Atlanta (see **ADDRESSES**.) Please reference the EA associated with the Interagency Florida Panther Response Plan in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office in Atlanta (see **ADDRESSES**.)

If you wish to comment, you may submit comments by any one of several methods. Please reference the EA associated with the Interagency Florida Panther Response Plan in such comments. You may mail comments to the Service's Regional Office in Atlanta (see **ADDRESSES**), or you may comment via electronic mail (e-mail) to *pantherresponseplan@fws.gov.* Please also include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to either Service office listed under **ADDRESSES**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under NEPA regulations at 40 CFR 1506.6.

Dated: September 7, 2007.

Cynthia Dohner,

Deputy Regional Director, Southeast Region.

[FR Doc. E7–21579 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Lake Champlain Sea Lamprey Control Alternatives Workgroup

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a meeting of the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup). The Workgroup's purpose is to provide, in an advisory capacity, recommendations and advice on research and implementation of sea lamprey control techniques alternative to lampricide that are technically feasible, cost effective, and environmentally safe. The primary objective of the meeting will be to discuss potential research initiatives that may enhance alternative sea lamprey control techniques. The meeting is open to the public.

DATES: The Workgroup will meet on Wednesday, December 5, 2007, from 5 p.m. to 8 p.m., with an alternate date of Monday, December 10, 2007, from 9 a.m. to 12 noon, should the meeting need to be cancelled due to inclement weather. Any member of the public who wants to find out whether the meeting has been postponed may contact Stefi Flanders of the U.S. Fish and Wildlife Service at 802–872–0629 ext. 10 (telephone); or *Stefi_Flanders@fws.gov* (electronic mail) during regular business hours on the primary meeting date.

ADDRESSES: The meeting will be held at the Rubenstein Ecosystem Science Laboratory, Room 207, 1 College Street, University of Vermont, Burlington, VT; telephone 802–859–3086.

FOR FURTHER INFORMATION CONTACT: Dave Tilton, Designated Federal Officer, Lake Champlain Sea Lamprey Control Alternatives Workgroup, Lake Champlain Fish and Wildlife Resources Office, U.S. Fish and Wildlife Service, 11 Lincoln Street, Essex Junction, VT 05452 (U.S. mail); 802–872–0629 (telephone); or *Dave_Tilton@fws.gov* (electronic mail).

SUPPLEMENTARY INFORMATION: We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). The Workgroup's specific responsibilities are to provide advice regarding the implementation of sea lamprey control methods alternative to lampricides, to recommend priorities for research to be conducted by cooperating organizations and demonstration projects to be developed and funded by State and Federal agencies, and to assist Federal and State agencies with the coordination of alternative sea lamprey control research to advance the state of the science in Lake Champlain and the Great Lakes.

Dated: October 5, 2007.

Thomas J. Healy,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

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BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Availability for Draft Recovery Crediting Guidance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft guidance document issued to promote implementation of the Endangered Species Act. The document describes a crediting framework for Federal agencies in carrying out recovery of threatened and endangered species. The text of the guidance is included in this notice. Under the draft guidance, Federal agencies could show more specifically how adverse effects of agency activities to a listed species are offset by beneficial actions taken elsewhere for that species. The combined effects of the adverse and beneficial actions would have to provide a net conservation benefit to the species. We solicit comment from all interested parties on the contents of the draft guidance and likely effects of its implementation.

DATES: Comments from all interested parties on the draft guidance document must be received on or before December 3, 2007.

ADDRESSES: The draft guidance may be downloaded from our Web site at *http://www.fws.gov/endangered/policy/oct.2007.html*. To request a copy of the draft guidance, write to U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240, Attention: Recovery Crediting; or call 703/358–2171. You may also send an e-mail request to *recovery_crediting@fws.gov*. Specify whether you wish to receive a hard copy by U.S. mail or an electronic copy by e-mail.

Send comments by any one of the following methods. See ''Viewing Documents'' and ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION** for important information.

- Mail: U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240, Attention: Recovery Crediting.
- Hand Delivery/Courier: Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203–1601.
- E-mail: *recovery_crediting@fws.gov*. Include ''Recovery Crediting comments'' in the subject line of the message.
- Fax: 703/358–2175. Include ''Recovery Crediting comments'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information about the draft guidance to Dr. Richard L. Sayers; Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants; U.S. Fish and Wildlife Service; 420 ARLSQ; Washington, DC 20240 (703/358–2171). Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

The ultimate goal of the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), is the recovery of endangered and threatened species and the ecosystems on which they depend. In administering the recovery provisions of the Act, the Service collaborates with many partners, including Federal, State, and local agencies, Tribal governments, conservation organizations, the business community, and private landowners.

Effective recovery planning and implementation depend in part on creative processes and agreements with Federal partners as well as other non-Federal partners in community-based recovery efforts. Examples of innovative conservation tools under the ESA include Safe Harbor Agreements, Habitat Conservation Plans, Recovery Permits, and Conservation Banks. The ultimate success of conservation and recovery of endangered and threatened species depends on a variety of innovations, such as these, that may be used in concert with one another or alone. We expect Recovery Credit Systems to complement them further. Additional information concerning these tools is available through the sources listed above under **ADDRESSES**.

The recovery credit approach provides Federal agencies with an additional recovery tool developed using existing authorities. As described below, this tool was initially established in Texas to allow Fort Hood Military Reservation to accrue credits for conservation measures that it arranged by contract with neighboring landowners. The arrangement we developed with Fort Hood can be applied by other Federal agencies which may obtain credit for advancing the recovery of a listed species, and this credit may be expended, or debited, to offset potential adverse effects of future actions. A recovery crediting system can allow a Federal agency to accrue credit for recovery actions in advance of effects resulting from any specific action with adverse effects. We expect this process to increase incentives for Federal agencies to use their authorities to further the purposes of the ESA.

The Service recognizes that recovery crediting is a mechanism with broad potential application. The Service may expand recovery crediting to entities other than Federal agencies or employ additional methods for Federal agencies. That is, we may be able to use credits as a measure of the benefit of conservation actions taken on Federal lands and we may consider other credit trading systems, beyond conservation banks, for landowners who take conservation actions on their own land or other private lands. We invite comment on how these or other arrangements may be provided for by this guidance and how these or other arrangements may be provided for by future guidance.

Viewing Documents

The complete file for the recovery crediting guidance as well as the comments and materials we receive are available for inspection, by appointment, during normal business hours at the Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203–1601.

Draft Guidance

The text of the draft guidance follows.

Draft Guidance on Recovery Crediting for the Conservation of Threatened and Endangered Species

I. Introduction

A. Purpose and Scope of Guidance

This document is intended to provide guidance on the development, management, and use of recovery credits as a measure for mitigating adverse effects to and contributions to the recovery of species listed as threatened or endangered under the Endangered Species Act of 1973, as amended (ESA). The guidance should assist Service personnel in determining the applicability of recovery credits for the conservation needs of a species, fulfill the purposes of the ESA, and provide consistency in the establishment, management, and use of recovery credits. For more detailed guidance and information on various other recovery programs, we included a list of helpful documents in section VII of this guidance. These documents will

help the reader have a more complete understanding of recovery programs as a whole.

Recovery crediting is an optional process for Federal agencies to use their authorities for the conservation of listed species. Recovery credits can provide an additional means of implementing ''conservation measures,'' commonly offered by Federal agencies to offset effects to listed species resulting from Federal actions. As noted in the Service's Consultation Handbook, ''When used in the context of the Act, 'conservation measures' represent actions pledged in the project description that the action agency or applicant will implement to further the recovery of the species under review.'' For further discussion of conservation measures, see *Endangered Species Consultation Handbook,* p. 4–18. In a recovery crediting system, the action agency would present credits as part of its project description. A pledge represented by a credit must be a legally binding commitment such as a contract with a private landowner.

Some potential benefits of a recovery crediting system include (1) better and more cost effective contributions to recovery through agency activities; (2) more exact analysis; and (3) increased predictability for all parties. The use of recovery credits as a conservation tool should be closely evaluated for each species or group of species, and may not be applicable in some situations. In other cases, recovery credits may be a valuable tool in advancing the recovery of a species.

This guidance is general in nature, as each process developed for using recovery credits will differ based on a variety of circumstances. A recovery crediting system should be tailored to the specific circumstances under which it would be applied; ideally it should be based on the relevant recovery plans and, when recovery plans are lacking or inadequate for the design of a recovery credit system, should rely on other Service-approved documents (see ''B. Planning and Development Phase'' below for examples). Recovery credit systems may complement mitigation tools and conservation programs currently available, such as conservation banking. This guidance also does not attempt to closely define or assign roles to the agencies and other participants in a recovery crediting system; we anticipate that these will vary to some degree in response to the circumstances surrounding particular systems.

B. Background

Effective recovery planning and implementation for listed species require creative processes, including recovery actions by Federal land managing agencies with adjacent landowners, local communities, Tribes, States and other Federal agencies.

The concept of recovery credits was developed in Texas to allow the Department of Defense (DoD) to receive credit for conservation measures being implemented by Fort Hood Military Reservation. Fort Hood, which is home to the largest known population of the endangered golden-cheeked warbler within its breeding range, carries out conservation measures with neighboring landowners in an effort to offset adverse effects that may result from future on-base military readiness activities. In exchange for implementing recovery actions, DoD requested that these actions be considered for ''banking'' to offset effects attributable to training activities.

Although the Fort Hood example is very specific and limited in scope, the general concept can be applied more broadly: Federal agencies may obtain credit for conservation actions undertaken on non-Federal lands to advance the recovery of listed species, and this credit may be expended, or debited, to offset potential adverse effects of future actions. In other words, Federal agencies may ''bank'' recovery credits in advance in a particular recovery crediting system, and apply those credits at a later time to the analysis of an agency action. This process can add an incentive for Federal agencies to use their authorities to further the purposes of the ESA.

C. What Is a Recovery Credit?

A recovery credit is a quantifiable unit of measure sanctioned by the Service representing a contribution to the recovery of a species listed under the ESA. For example, in its simplest form, one credit could equal a specified number of acres of habitat or the acreage necessary to support one nest of the target species. Recovery credits should be based on a commitment to implement recovery actions outlined in a particular species' recovery plan or alternative Service-approved document. Each recovery credit, therefore, may be considered to be part of recovery implementation leading towards the downlisting or delisting goals of a threatened or endangered species, taking into account the debits that have occurred.

A recovery crediting system is a specific program established to provide recovery actions on non-Federal lands for specific species while creating a ''bank'' of credits that a Federal agency may use to offset the effects of its actions. That is, the Federal agency may develop and store credits to be used at a later time to offset particular adverse effects of its actions. The overall system must provide a net benefit to the conservation of covered species, as determined by the Service using relevant recovery plans or alternative Service-approved documents. Under this policy, only Federal agencies may apply recovery credits to the effects of their proposed actions, but the system is similar in principle to conservation banking and habitat conservation plans. As noted above, however, we seek comments whether this policy may be expanded so that States, landowners, tribes, and other non-Federal entities may accrue credits for contributions to recovery.

Recovery credits must be realized to create a ''bank'' of credits before they can be used to compensate for adverse effects to listed species. Unlike the situation with conservation banks, the recovery crediting system may be used for either permanent or temporary effects. However, the positive effects of the credits may be temporary (e.g., secured by a term contract) only if the negative effects to be offset are also temporary and, further, if the accounting function of the recovery credit system ensures that benefits of the credits are achieved in a way that actually offsets negative effects. The recovery actions represented by credits must take place within a geographic area that is biologically appropriate to offset the adverse effects, such as a recovery unit.

II. Guidance Considerations

A. Authorities

The ESA provides the framework for this guidance. The ESA's stated purposes include providing ''* * * a means whereby the ecosystems upon which [listed] species depend may be conserved * * *'' and ''* * * a program for the conservation of such [listed] species * * *.'' Under section 3 of the ESA, conservation is defined as using ''* * * all methods and procedures which are necessary to bring any [listed] species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.'' Within the context of this guidance, these definitions help determine and evaluate appropriate conservation measures and benefits. Further, recovery planning is addressed under section 4(f) of the ESA, where provisions for the development of

recovery plans for the ''conservation and survival of [listed] species'' are provided. A recovery plan is one of the most important tools to ensure sound decision-making throughout the recovery process.

Section 7(a)(1) of the ESA requires that all Federal agencies '' * * * in consultation with and with the assistance of the [Service], utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of [listed species].'' There is broad discretion for Federal agencies to determine the appropriate methods for implementation of section 7(a)(1). One possible method for agencies to utilize their authorities for the conservation of the species is through this recovery crediting system.

Establishing a recovery crediting system that results in a net conservation benefit to a listed species would contribute to that species' recovery. That is, the status of the target species will improve because, overall, a net conservation benefit must be sufficient to contribute to the recovery of the target species. Of course, each Federal agency will have to balance their authorities, statutory obligations and missions to determine if this policy is appropriate or viable for their purposes. For example, a Federal agency will have to determine if it has authority to acquire interest in non-Federal lands.

B. Goals and Objectives

The goal of a recovery crediting system is to enhance the ability of Federal agencies to promote the recovery of listed species on non-Federal land and offset adverse effects to listed species from proposed actions. Objectives are (1) to produce a net conservation benefit for the target species that advances its recovery, (2) to increase the flexibility of Federal agencies to accomplish their missions while meeting their requirements under the ESA, and (3) to promote effective Federal/non-Federal partnerships for species recovery.

In order to meet the first objective, the standard for establishing recovery credits should be implementing actions within an approved recovery plan or other Service-approved document (such as a conservation strategy or framework) that specifically addresses the major threats identified for a species. An important element of any recovery crediting system is the implementation of one or more specific tasks included in a species' recovery plan or an alternative Service-approved document necessary to meet downlisting or delisting criteria. Providing credits for recovery tasks allows Federal agencies to work together with other entities to more effectively use conservation measures in achieving net benefits that contribute to recovery, rather than simply addressing on-site effects of particular projects. When it is possible to foresee the utility of a recovery crediting system during the preparation of a recovery plan, authors of a plan should incorporate elements of the system explicitly in the plan.

C. Principles of Recovery Crediting

Simply put, the recovery credit system is: (1) The development and accrual of credits, which would accomplish recovery tasks and have a net conservation benefit for the target species; and (2) A subsequent Federal action, which uses (debits) some portion of the credits, as part of the Federal action to offset adverse effects.

Federal agencies can employ a recovery crediting system to accomplish recovery tasks as well as offset the adverse effects of their actions. Although Federal agencies with appropriate authorities may also purchase credits in a conservation bank or employ other mitigation or conservation measures, a Federal Agency may want to establish a system specific to its needs. Recovery crediting works within the existing framework of the ESA and its implementing regulations. This guidance is intended to assist in the early stages of planning and development of a proposed recovery crediting system. While no two crediting systems are likely to be identical, this guidance serves to address fundamental principles that would apply to all situations.

The general principles of establishing a recovery crediting system include:

The Recovery Crediting Process

- Information gathering and analysis;
- Planning and credit development phase; and
- Consultation on the credit accrual process (may be combined with the consultation on the debiting process)

The Recovery Debiting Process

- Debit development phase;
- Programmatic debiting consultation; and
- Project specific consultation under programmatic consultation.

Project Specific Application

- Project specific consultation under programmatic consultation; and
- Actual debits of the credits.

While these bullets are based on multiple consultations, the Service believes that consultation can be achieved in many cases through a two-step consultation process: (1) A programmatic consultation to establish the recovery credit and debiting process and (2) a project specific consultation.

D. Coordination Process

The Service has neither the resources nor the authorities to implement many, if not most, recovery actions. Collaboration with a wide variety of potential stakeholders is essential for the implementation of recovery plans. An appropriate recovery crediting system can assist the Service, other Federal agencies, and their partners to achieve more effective implementation of recovery plans.

The Service and the Federal action agency will coordinate to ensure that the crediting system complies with all applicable laws. The Service and the Federal action agency should coordinate to ensure that the crediting system complies with all applicable laws. In particular, action agencies and the Service may need to review laws relating to privacy such as the Freedom of Information Act (''FOIA'') and the Privacy Act. Further, depending on the system used to create the recovery credits, action agencies and the Service may need to review the Federal Advisory Committee Act (''FACA''). The National Environmental Policy Act (''NEPA'') may be a relevant consideration as well. Service employees can consult with their appropriate solicitor's office for more specific advice with regard to these laws.

The Service will coordinate with appropriate Federal and State partners, and we will encourage State and local entities, both governmental and non-governmental, to participate on the various workgroups and committees formed under the recovery crediting system that will be central to each process involved. For example, a local scientific committee may be established to assist the Service in defining recovery credits. While accrued recovery credits are only used by the Federal agency, the accrual process (as described below) is the key to success and should include participation by whatever non-Federal entities are appropriate.

III. Recovery Crediting Process

A. Information Gathering and Analysis Phase

This phase involves the identification of threats and the conservation actions needed to address those threats. Generally, the species' recovery plan will provide a framework for analysis. This analysis establishes the means by which a credit in a recovery crediting system will be measured and accounted for. Information gathering and analysis

involves the compiling of available information sources, identifying data gaps, and evaluation of target species. As stated above, a central element to defining a recovery crediting system is coordination with appropriate Federal and State partners, as well as interested local and non-governmental entities.

Within this phase, two important issues should be addressed: (1) Evaluation of the conservation needs of the target species, and (2) determination whether a recovery crediting system is feasible based on the conservation needs of the listed species. Critical to both issues is the ability to evaluate measurable conservation benefits to the target species. Recovery crediting systems will vary in details, and some listed species may not be appropriate for inclusion in a credit system based on their conservation needs. Examples may include:

- Species with poorly understood threats,
- Species for which even minimal incidental take is likely to result in a jeopardy determination,
- Species with recovery plans that only provide interim objectives due to a lack of information necessary for recovery, or
- Species for which credits cannot easily be valued due to the nature of threats (e.g., a local endemic threatened by impoundment of a river).

B. Planning and Development Phase

This phase uses the results of the information gathering and analysis to establish in detail what constitutes a credit. As in other conservation programs, the planning and development phase is likely to be the most important and time-consuming part of the process. Although debiting of credits will not come into play until after the credits are established, the debiting must be considered in the credit development phase in order to meet the standard of a net conservation benefit. As part of the planning process, Federal agencies may identify future needs, locations of future projects, types of future projects, and associated project activities. Values may be assigned to different tasks within a recovery plan or alternative Service-approved planning document based on priority, and the use of debits may be limited depending on the needs of the species' recovery. In addition, the recovery crediting system must integrate monitoring and reporting of both accrual and debiting of credits.

Any recovery crediting system should address the threats that caused the species to be listed, advance the conservation goals of the species and must be based on sound scientific principles. An important part of the identification of credits is to first identify the threats to the species and measures to remove or ameliorate those threats to establish a conservation framework for the species. When conservation goals for the species have been established, the Service will be able to identify the appropriate unit of measure to establish a credit. The connection between threat, conservation measure, and credit must be transparent. That is, the system must demonstrate the relationship between the conservation value of the conservation measure as it applies to the credit.

As stated above, in instances where a recovery plan is not specific, is not available, or is outdated, the Service may consider other means to establish recovery crediting. We will use information we determine represents the best available scientific information on the needs of the species. One option may be to develop a local step down approach or strategy to address the needs of a species. Other documents that may be useful in this regard include a recovery outline, a 5-year status review conducted by the Service, State recovery plans, final listing rules, and State Wildlife Action Plans.

Credits should be valued based on recovery tasks, or analogous measures, available to a Federal agency. This phase will develop values to be assigned to recovery tasks, ensuring that a net conservation benefit is realized for the target species. Credit values are based upon achieving measurable objectives, and higher priority recovery tasks would generally receive more credit than lower priority ones. Ranking threats may be accomplished among or within tasks in a recovery plan. For example, various Federal conservation programs use a project selection process based on several considerations. Higher value (i.e., more credit) is typically placed on potential projects that:

- Preserve long term habitat.
- Address high priority conservation needs.
- Are larger in size (i.e., habitat size or quality).
- Are adjacent or in proximity to public lands or other permanently protected areas.
- Target a specific geographic focus area (e.g., recovery unit).
- Benefit multiple species.
- Establish corridors to accommodate migration or connect fragmented habitat.

In this phase, the temporal nature of potential effects on or needs of the species may be analyzed. Many species require active management (e.g., invasive species control, prescribed fire, etc.) or public outreach to contribute to recovery or research to support recovery. Thus, some credits may be temporary in nature, provided the action meets the conservation needs of the species. Temporary credits could be used to offset temporary adverse effects in appropriate situations that still allow a net conservation benefit. For example, many transportation and linear utility projects require temporary workspace for construction, which is later returned to pre-construction conditions. An agency could accrue credits for the restoration and temporary protection of degraded habitat to mitigate for habitat that has temporary adverse effect, with the duration of credit based on benefits achieved at the restored site and eventual restoration of the affected site.

In its simplest form, a single Federal agency would identify a recovery action(s) for establishment of a recovery crediting system. For example, a recovery plan may call for the permanent preservation of a viable population in a particular recovery unit. A Federal agency may identify that need, and develop a process for accruing credits through conservation easements that would meet that objective of the recovery plan (preserving the viable population). Credits reflecting habitat protection or restoration would be considered to be banked when conditions on the ground fully reflect the recovery goal supported by the credits. More complex crediting systems may involve multiple Federal agencies and may assign credits to several or all tasks within a recovery plan. In either case, a single Federal agency would be the holder of credits. Whenever possible, other partners should be included in the development process (e.g., State agencies, non-governmental organizations, etc.), and they may play a major role in implementing the credit accrual process.

Finally, in the development phase, it is important to address the transferability of accrued credits. Circumstances may arise in which a Federal agency may opt to sell or transfer banked credits to another agency. These situations should be considered early and be included in the crediting process, but may be defined in greater detail within the debiting process.

C. Consultation on Credit Accrual Phase

Upon completing the development of a proposed crediting process the Federal action agency will consult under section 7 of the ESA. Thus, the use of a proposed crediting system would be a

discretionary Federal action that ''may affect'' a listed species, which requires section 7 consultation. For the process developed to accrue credits, the net effect on the target species should be beneficial. Most credit accrual processes will be addressed through informal consultation, concluding with a ''not likely to adversely affect'' concurrence letter from the Service. (As noted above, this consultation could be part of a programmatic consultation.) In these cases, the Service will evaluate all potential effects of the credit accrual process and, if it is determined that the effects would be insignificant, discountable, or completely beneficial, provide an appropriately detailed rationale for the concurrence. In some instances, temporary adverse effects may be necessary to achieve the maximum conservation benefit to the target species. For example, a survey may involve some level of taking of a listed species. In these cases, it may be necessary to consult formally on the credit accrual process, if it is anticipated that incidental take may occur as a result of credit acquisition. Alternatively, a Federal agency may consult on the entire recovery credit system, covering accrual and debiting in one programmatic consultation.

As discussed above, although a Federal agency needs to consider how credits will be debited while determining how they will be accrued, once the agency establishes a recovery crediting system through the section 7 consultation process, a Federal agency may begin accruing credits through the procedures outlined in the plan.

IV. Recovery Debiting Process

A. Debit Development Phase

This phase establishes the standards according to which credits will be used. This phase may be conducted separately or concurrently with the credit accrual planning and development. An advantage of considering crediting and debiting at the same time is that a better match may be achieved between the credits accrued and the debiting needs. Establishing the guidelines for debit use and other factors, limitations, accounting, and monitoring and reporting may be created as a stand-alone document, but will eventually become the ''Project Description'' within a biological assessment or evaluation, and subsequent biological opinion. In addition, the debit process could consider the possibility of Federal agencies other than the Federal agency that established the Recovery Crediting System being able to use credits.

Consideration of debits includes ensuring that agencies maintain a net conservation benefit gained by credit accrual. In general, credits that accomplish tasks in a species' recovery plan would normally meet a net conservation benefit standard. However, because credits would be used for mitigation, it is important to ensure the debit process does not limit, counter, or preclude necessary recovery objectives. Examples of using a debiting process to ensure a conservation benefit include:

- Using biologically-appropriate mitigation ratios in habitat-based crediting (e.g., more than one credit for each debit necessary to fully offset adverse effects).
- Maintaining a credit balance that ensures an incremental increase in the species' conservation status.
- Restricting use of debits to areas deemed not essential to recovery.
- Limiting the types of activities available for debiting.

Similar to planning the crediting phase, it is essential that an activity or action's potential effects to the target species be sufficiently understood in order for it to be included in the debiting process. In some instances, the effects of even well-understood actions may possess some level of uncertainty. The debiting process should be designed to accommodate uncertainty evaluated based on a clearly stated and explained set of assumptions.

B. Programmatic Debiting Consultation

The debiting process is subject to consultation under section 7(a)(2) of the ESA. This consultation determines whether a proposed agency action is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. Programmatic consultation addresses programs or groups of similar actions implemented by a Federal agency. A non-jeopardy biological opinion also determines the amount or extent of anticipated incidental take, if any.

In implementing a recovery crediting system, the programmatic approach will be necessary due to the nature of credit and debit concepts, and to ensure a net conservation benefit to the species. The Federal action subject to consultation is the establishment of the debiting process and actions included therein. Under programmatic consultation, much of the effects analysis is completed upfront, rather than repeatedly for each individual action. By completing this analysis beforehand in a programmatic biological opinion, the anticipated effects of the action agency's future projects can be added into the environmental baseline prior to their actual completion. The appended and tiered methods of programmatic consultation involve a two-stage consultation process that would be appropriate here. The first stage is programmatic and analyzes the potential landscape-level effects that may result from the debiting process. The second stage addresses project-specific effects of each individual project under the action agency's program and previously included in the programmatic biological opinion.

A Federal agency may include conservation measures in a proposed action as mandatory, non-discretionary actions or activities that will minimize adverse effects to listed species. A recovery crediting system would formalize that process and mitigate adverse effects to listed species by taking measures (accruing recovery credits) that may be included as conservation measures for a specific project in a specific geographic location. The Service would consider the use of recovery credits during the jeopardy analysis of a biological opinion. The ESA requires the Service to specify any necessary or appropriate minimization of the effects of incidental take exempted in a biological opinion. Because recovery credits would be acquired in advance of a specific Federal action and may not be associated with incidental take resulting from the proposed action itself, they would not normally minimize the effects of incidental take associated with the specific action. The biological opinion may still require reasonable and prudent measures and terms and conditions that address the incidental take resulting at the project-specific level.

The end product of programmatic consultation will be a comprehensive biological opinion issued to the Federal action agency that describes in detail the debiting process and all actions and activities involved. It will evaluate all potential effects of the actions (debits) as well as the credits used to offset the effects and provide a jeopardy analysis for listed species and destruction/adverse modification analysis for designated critical habitat if applicable. It is important to consider all listed species that may be affected, not just the target species, and any designated critical habitat occurring in the action area for the jeopardy/adverse modification analysis.

The programmatic biological opinion may not be able to describe take at the programmatic level. In this case, the specific take authorization and associated reasonable and prudent measures and terms and conditions

would be described in site-specific biological opinions. If the overarching biological opinion can describe, with appropriate documentation from the action agency, the project-specific actions, then a list of reasonable and prudent measures and terms and conditions can be included, and no additional opinion is needed for those actions. The Service must develop reasonable and prudent measures and terms and conditions in close coordination with the action agency. This coordination may identify specific measures the action agency will incorporate at the project-specific level.

C. Project-Specific Consultation

As individual projects are proposed under the recovery crediting system, the action agency provides project-specific information as described in the programmatic biological opinion. This information should include, but not be limited to, the specific areas to be affected, the species and critical habitat that may be affected, a description of anticipated effects (in reference to those already analyzed in the programmatic biological opinion), a description of any additional effects not considered in the programmatic consultation, appropriate reasonable and prudent measures and terms and conditions, the resulting debits as ranked in the programmatic opinion, and the credit balance resulting from the action. The project-level consultation should be an expedited process because most of the needed analysis will have occurred at the programmatic level. This is an added incentive for Federal agencies to use programmatic consultation and recovery crediting.

V. Monitoring

A monitoring program is essential to the success and the credibility of a recovery crediting system, both for the crediting and debiting aspects of the process. The scope of the monitoring plan should be commensurate with the crediting system's conservation framework, based on the goals and objectives of the species' recovery plan; the monitoring should measure the objectives as implemented by the crediting system. Ultimately, the Federal action agency is responsible for accounting for credits and compliance with the debiting process as determined through the programmatic biological opinion. The Service should provide technical assistance in the monitoring plan, and will be responsible for periodic review of the species' environmental status, either through an established protocol or more conventional methods (e.g., 5-year review, programmatic biological opinions, etc.).

In general, monitoring may comprise two elements: Effectiveness monitoring and compliance monitoring. Effectiveness monitoring will evaluate the credit valuation and accrual process in achieving the goals and objectives of recovery actions. This monitoring focuses on the crediting process, involves principles of adaptive management, and includes all implementation partners. The responsibility of effectiveness monitoring belongs to the Federal agency that accrues and holds credits, although other entities would be involved. When the credit accrual process results in a biological opinion from the Service, effectiveness monitoring provisions are part of the project description. Any coverage under the incidental take statement, therefore, is dependent on the action agency carrying out the action as described in the project description.

Compliance monitoring audits and accounts for credits and debits, and ensures proper implementation of the agency action. Any monitoring and reporting must be incorporated into the project description as an integral part of implementing the recovery crediting system.

Although a recovery crediting system is a focused tool for Federal agencies to make a positive contribution towards the recovery of listed species while creating flexibility for offsetting effects of their other actions, the Service encourages the development and use of other types of crediting systems to meet other needs and circumstances. In addition, this guidance by no means restricts Federal agencies from developing other crediting systems such as conservation banks. A recovery crediting system is one method by which a Federal agency may contribute towards its section 7(a)(1) responsibilities. The Service encourages Federal agencies to develop other programs that would also contribute to the recovery of listed species on Federal and non-Federal lands.

VII. References

The following is a list of documents that would be useful for establishing a recovery crediting system. Some are in draft form, but are readily available to Service personnel through Regional Offices or the Washington Office.

U.S. Fish and Wildlife Service. 1990. Policies and guidelines for planning and coordinating recovery of endangered and threatened species. Washington, DC. 14pp. + appendices.

U.S. Fish and Wildlife Service. 1999. Final Safe Harbor Policy. 64 FR 32717, June 17, 1999.

U.S. Fish and Wildlife Service. 2003. Guidance for the Establishment, Use, and Operation of Conservation Banks.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangerered Species Act Consultation Handbook: Procedures for Conducting Section 7 Consultations and Conferences. Washington, DC.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2004 (updated 2006). Draft Endangered and Threatened Species Recovery Planning Guidance.

Williams, B.K., R.C. Szaro, and C.D. Shapiro. 2007. Adaptive Management: The U.S. Department of the Interior Technical Guide. Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC.

Public Comments Solicited

The draft guidance is broad in nature and intended to be adaptable to a wide array of local conditions and circumstances. We are particularly interested in receiving comments on the following aspects of the draft document:

- The level of detail required to make the guidance most useful in the field.
- The clarity of the standards established for a recovery crediting system.
- The means by which a Federal agency will know that credits it accrues will be available for its use in the future.
- The potential relationship between recovery crediting systems and critical habitat.

We will take into consideration the relevant comments, suggestions, or objections that we receive by the comment due date indicated above in **DATES**. These comments, suggestions, or objections, and any additional information we receive, may lead us to adopt final guidance that differs from the draft. We prefer to receive comments via e-mail, but you may submit your comments by any method mentioned above in **ADDRESSES**.

Please submit e-mail comments to *recovery_crediting@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Recovery Crediting comments'' in the subject line of the message, preferably with your full name and return address in the body of your message. Please note that the Internet address will be closed when the public comment period ends.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 25, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–21563 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes the Approval of the Tribal-State Compact between the State of California and the Yurok Tribe.

EFFECTIVE DATE: November 2, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The compact allows for two gaming facility and authorizes up to 99 gaming devices and any devices or games authorized under State law to the State lottery. Finally, the term of the compact is until December 31, 2025. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Tribal-State Compact between the State of California and the Yurok Tribe is now in effect.

Dated: October 24, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–21624 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–840–07–1610–DQ–241A]

Southwest Resource Advisory Council; Canyons of the Ancients National Monument Subgroup Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 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 (BLM) Southwest Resource Advisory Council (SWRAC) Canyons of the Ancients National Monument (Monument) Subgroup, will meet as directed below.

DATES: The Southwest RAC Canyons of the Ancients National Monument (Monument) Subgroup will meet on November 30, 2007 at the Anasazi Heritage Center in Dolores, Colorado. The meeting will begin at 9 a.m. Two public comment periods are planned and will begin at approximately 11:30 a.m. and 2:30 p.m. The meeting will adjourn at approximately 4 p.m. A second meeting will be held December 7, 2007 at the Anasazi Heritage Center in Dolores, Colorado. The meeting will begin at 9 a.m. Two public comment periods are planned and will begin at approximately 11:30 a.m. and 2:30 p.m. The meeting will adjourn at approximately 4 p.m.

ADDRESSES: The Southwest RAC Canyons of the Ancients National Monument (Monument) Subgroup meeting will be held at the Anasazi Heritage Center, located at 27501 Highway 184, in Dolores, Colorao.

FOR FURTHER INFORMATION CONTACT: LouAnn Jacobson, Monument Manager or Heather Musclow, Monument Planner, Anasazi Heritage Center, 27501 Hwy 184, Dolores, Colorado 81323; Telephone (970) 882–5600.

SUPPLEMENTARY INFORMATION: The 11-member Subgroup provides counsel and advice to the full Council for its consideration and deliberation concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. We plan to discuss include the content of the Monument's Draft Resource Management Plan/Draft Environmental Impact Statement and other issues as appropriate.

The meeting is open to the public and includes a time set aside for public comment. Interested persons may make oral statements at the meeting or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Subgroup meetings will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Subgroup can be obtained from the Monument planning Web site at: *http://www.blm.gov/rmp/canm* which will be updated following each Subgroup meeting.

Dated: October 26, 2007.

LouAnn Jacobson,

Monument Manager, Canyons of the Ancients National Monument.

[FR Doc. E7–21580 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–921–08–1430–FR–241E; UTU–85820]

Filing of State Indemnity Selection Application and Termination of Exchange Segregation; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: On September 11, 2007, the State of Utah, School and Institutional Trust Lands Administration (State) filed indemnity selection application UTU–85820, to have the surface and mineral estate of 281.72 acres of Federal land transferred to the State pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851–852). The lands have been selected by the State *in lieu* of school section lands granted to the State pursuant to the Utah Enabling Act of July 16, 1894, but for which title could not pass because the lands were otherwise encumbered or reserved at the time of statehood.

FOR FURTHER INFORMATION CONTACT: Joy Wehking, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155. Phone 801–539–4117.

SUPPLEMENTARY INFORMATION: The 281.72 acres under application are located in Iron County, and are described as follows:

T. 35 S., R. 12 W., Salt Lake Meridian, Utah

Sec. 14, S½S½SW¼, W½SE¼;
Sec. 15, S½S½SE¼;
Sec. 23, Lot 2, E½NW¼.

The above described lands were segregated from the public land and mineral laws on July 30, 2004, in connection with an exchange proposal (UTU–79738) between the Bureau of Land Management and the State. The lands have been eliminated from the exchange and the exchange segregation is hereby terminated upon publication of this notice. The filing of the *in lieu* application by the State segregates the Federal lands from the public land laws and mineral laws. This segregation becomes effective upon publication of this notice and shall terminate upon the issuance of a certificate of acceptance of the *in lieu* selection for the Federal lands if the lands are found suitable for transfer; upon the publication in the **Federal Register** of a notice of termination of the segregation; or upon the expiration of two years from the date of the filing of this application, whichever occurs first.

Authority: 43 CFR 2091.3–1(b) and 43 CFR 2201.1–2(c)(2).

Dated: October 26, 2007.

Jeff Rawson,

Acting State Director.

[FR Doc. E7–21556 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–510–1610–DQ]

Notice of Availability of Special Status Species Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Special Status Species Proposed Resource Management Plan Amendment (RMPA)/Final Environmental Impact Statement (EIS) for portions of the Carlsbad and Roswell Field Offices in New Mexico.

DATES: The BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest which is or may be adversely affected, may protest the BLM's approval or amendment of a RMP. You may file a protest within 30 days of the date that the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. Instructions for filing of protests are described in the Dear Reader letter in the front of the Special Status Species Proposed RMPA/Final EIS and in the Supplementary Information section of this notice.

ADDRESSES: For additional information on how to file a protest, refer to the Supplementary Information section below.

FOR FURTHER INFORMATION CONTACT: Howard Parman, BLM, Pecos District Office, 2909 West Second Street, Roswell, New Mexico 88201. To receive a copy of the document, contact the BLM at the above address or call 505–627–0272 during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The planning area for the Special Status Species Proposed RMPA/Final EIS, which includes approximately 850,000 acres of BLM-administered public lands and 1.15 million acres of Federal minerals, is located in Chaves, Eddy, Lea, and Roosevelt Counties, New Mexico. A map of the planning area is available on the BLM New Mexico Web site (*http://www.nm.blm.gov*). The BLM-administered public lands within the planning area are currently managed under interim management guidelines issued on August 5, 2004, in accordance with the decisions in the 1988 Carlsbad RMP, as amended, and the 1997 Roswell RMP. The BLM will continue to manage these lands in accordance with the interim management guidelines until the RMPA is completed and a Record of Decision is signed.

The purpose of the Proposed RMPA/Final EIS is to amend the existing RMPs, to protect and enhance habitat for the lesser prairie chicken and sand dune lizard while allowing other uses to continue. The Proposed RMPA/Final EIS documents the direct, indirect, and cumulative environmental impacts of six alternatives for BLM-administered public lands within the planning area. Issues related to possible management direction and planning decisions (not in priority order) include: development of energy resources, special management designation, special status species management, livestock grazing, and off-highway vehicle designations.

The Draft RMPA/EIS was released to the public for a 90-day comment period on October 20, 2006. The BLM hosted public meetings in Roswell, Carlsbad, Artesia, and Hobbs, New Mexico, and Midland, Texas, to answer questions about the document, as well as to solicit comments from the public. Public comments on the Draft RMPA/EIS are on file and available for public review at the address listed above.

Six alternatives were identified in the Draft RMPA/EIS:

- *The No Action Alternative:* represents the continuation of existing management plans, policies, and decisions as established by the current RMPs.
- *Alternative A:* Adopts the portions of the Conservation Strategy developed by the Southeast New Mexico Lesser Prairie Chicken Working Group that applies to public lands and Federal minerals.
- *Alternative B (BLM's Preferred Alternative):* Represents the Conservation Strategy and adds emphasis to sand dune lizard habitat and surface reclamation.
- *Alternative C:* Represents the continuation of Interim Management, originally put in place by the BLM (August 2004) to preserve management options in the Planning Area.
- *Alternative D:* Focuses management efforts on preserving occupied habitat.
- *Alternative E:* Focuses management efforts of preserving lesser prairie-chicken habitat through the designation of an area of critical environmental concern.

In the Proposed RMPA/Final EIS, the BLM has selected Alternative B, the Preferred Alternative in the Draft RMPA, as its Proposed Plan. Comments on the Draft RMPA/EIS received from the public and internal BLM review comments were incorporated into the Proposed Plan. Public comments resulted in the addition of clarifying text, but did not significantly change the proposed land use decisions in the Preferred Alternative. The Proposed Plan represents the portions of the strategy developed by the Southeast New Mexico Lesser Prairie Chicken Working Group that apply to public lands and Federal minerals, and adds emphasis to sand dune lizard habitat and surface reclamation. Copies of the Special Status Species Proposed RMPA/Final EIS have been sent to affected Federal, State, and local government agencies and to interested parties. A copy of the Special Status Species Proposed RMPA/Final EIS is available

for review via the internet from a link at *http://www.nm.blm.gov,* or at the BLM Roswell Field Office, 2909 West Second Street, Roswell, New Mexico, and the Carlsbad Field Office, 620 East Greene Street, Carlsbad, New Mexico. Electronic (on CD–ROM) and paper copies may also be obtained by contacting Howard Parman at the aforementioned address and phone number.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMPA/Final EIS may be found at 43 CFR 1610.5–2. A protest may only raise those issues which were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid, unless the protesting party also provides the original letter by regular mail or other delivery service postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy, and it will receive full consideration. If you wish to provide us with such advance notification, please direct faxed protests to the attention of Brenda Hudgens-Williams, Protest Coordinator, at (202) 452–5112, and e-mails to *bhudgens@blm.gov.* Please direct the follow-up letter to the appropriate address provided below.

The protest must contain:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the part or parts of the proposed plan and the issues being protested.
3. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process of a statement to the date they were discussed for the record.
4. A concise statement explaining why the protestor believes the State Director's decision is wrong.

All protests must be in writing and must be sent to the following address via regular mail or other delivery service: Regular Mail, Director 210, Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035. Overnight Mail, Director 210, Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20236.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The BLM Director will promptly render a decision on the protests. The decision will be in writing and will set forth the reasons for the decision. The protest decision will be sent to the protesting party by Certified Mail, Return Receipt Requested. The decision of the Director will be the final decision of the Department of the Interior. The State Director will sign the Record of Decision for the Special Status Species RMPA once the protests are resolved.

Linda S.C. Rundell,

New Mexico State Director.

[FR Doc. E7–21510 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT090–1610–012J]

Notice of Availability of the Draft Resource Management Plan and Draft Environmental Impact Statement for the Monticello Field Office in San Juan County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) hereby gives notice that the Monticello Draft Resource Management Plan and Draft Environmental Impact Statement (DRMP/DEIS) is available for a 90-day public review and comment period. This notice also meets requirements in 43 CFR 1610, 7–2(b) concerning potential Areas of Critical Environmental Concern (ACECs).

DATES: To ensure that your written comments on the DRMP/DEIS will be considered, you should send them to the BLM within 90 days following the date the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. The BLM will announce public meetings and other public-involvement activities at least 15 days in advance through public notices, news releases, direct mailings, and posting on the project Web site at: *www.blm.gov/ut/st/en/prog/planning.1.html.* Public meetings will be held in Monticello, Moab, Blanding, Montezuma Creek, and Salt Lake City, UT; and in other locations, if warranted.

ADDRESSES: Address written comments to: RMP Comments, Monticello Field Office, Bureau of Land Management, PO Box 7, Monticello, Utah 84535. Comments may also be faxed to the Monticello Field Office at (435) 587–1518, or submitted electronically by e-mail to: *UT_Monticello_RMP_Comments @blm.gov.* Comments and information submitted on the DRMP/EIS, including names, e-mail addresses, and street addresses of respondents, will be available for public review and disclosure at the above address. The BLM will not accept anonymous comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Gary Torres, Land Use Planner, Monticello BLM Field Office, PO Box 7, Monticello, Utah 84535, phone (435) 587–1524. To have your name added to the Monticello RMP mailing list, or to view and download the DRMP/DEIS in portable document format (PDF) go to the project Web site: *http://www.blm.gov/ut/st/en/prog/planning.1.html.* Copies of the DRMP/DEIS are also available at the BLM Monticello Field Office.

SUPPLEMENTARY INFORMATION: The DRMP/DEIS addresses public lands and resources managed by the Monticello Field Office in San Juan County, Utah. These lands and resources are currently managed under the San Juan Resource Management Plan (1991). The planning area includes approximately 1.8 million acres of BLM-administered surface lands and additional federally-owned minerals under Federal, state, tribal, and private lands in the area. Decisions in the Monticello RMP will only apply to BLM-administered public lands and federally-owned minerals.

Major issues considered in the DRMP/DEIS include oil and gas leasing, mining, range and livestock management, access and transportation, recreation and off-highway vehicle management, special status species, special designations (including ACECs and suitability of rivers for Congressional designation into the national Wild and Scenic Rivers System), and lands with wilderness characteristics.

The DRMP/DEIS proposes and analyzes five alternatives for future management of the public lands and

resources in the planning area. The alternatives present different management balances between the various resources and uses.

The BLM analyzed five alternatives for the DRMP/DEIS:

- *Alternative A* (No Action): represents continuation of existing management under the current management goals, objectives and direction specified in the San Juan Resource Management Plan (1991).
- *Alternative B:* emphasizes protection of natural resource values.
- *Alternative C* (The BLM's Preferred Alternative): proposes balancing resource protection with commodity production.
- *Alternative D:* emphasizes commodity production.
- *Alternative E:* provides protection of natural resource values with emphasis on protection of non-WSA lands with wilderness characteristics.

As required by law, the DRMP/DEIS considers the designation and protection of ACECs. ACEC values and resource use limitations vary by ACEC, and the ACECs themselves vary by alternative. (Refer to the table below.)

ACRES OF PUBLIC LAND TO BE MANAGED AS ACECS UNDER THE ALTERNATIVES IN THE MONITCELLO DRMP/DEIS

ACEC Values and Use Limitations	Alt. A (no action)	Alt. B	Alt. C (preferred)	Alt. D	Alt. E
Alkali Ridge ACEC	39,202	39,196	39,196	0	39,196
Values: Cultural.					
Limitations: Closed to private and (or) commercial use of woodland products except for limited on-site collection of dead wood for campfires. Livestock use may be restricted if cultural resources are being impacted. No surface disturbing vegetation treatments. Any treatment must avoid cultural sites by sufficient margin as to have no impact.					
Bridger Jack Mesa ACEC	6,260	6,225	0	0	6,225
Values: Near-relict vegetation.					
Limitations: Managed as Visual Resource Management (VRM) Class I. Open for mineral leasing subject to No Surface Occupancy (NSO) on the mesa top; available for geophysical work that does not impact the relict vegetation communities. Closed to the disposal of mineral materials. Open to locatable mineral entry with approved plan of operations, subject to stipulations regarding surface use of the mesa top, insofar as there is no adverse impact to vegetation communities. Excluded from livestock grazing, including grazing by saddle stock and pack animals allowed for access. Excluded from land treatments or other improvements, except for test plots and facilities necessary for study of the plant communities, and restoration/reclamation activities. Closed to Off Highway Vehicle (OHV) use. Closed to private and (or) commercial use of woodland products except for the limited on-site collection of dead wood for campfires.					
Butler Wash North ACEC	17,464	17,365	0	0	17,365
Values: Scenic.					
Limitations: Managed as VRM Class I. Open for mineral leasing subject to NSO; however, the field manager would grant an exception to the NSO stipulations in the event it is determined through an EA, or EIS if necessary, with the adoption and use of appropriate mitigation measures, that the project would meet visual quality standards for the area. Closed to disposal of mineral materials. Retained in public ownership and withdrawn from entry. Closed to private and (or) commercial use of woodland products, except for limited on-site collection of dead wood.					
Cedar Mesa ACEC	295,336	306,743	0	0	306,743
Values: Cultural.					
Limitations: Available for livestock use with special conditions to protect at-risk cultural resources. Closed to private and (or) commercial use of woodland products except for limited on-site collection of dead wood for campfires. Campfires limited to mesa tops and would be closed if there are impacts to cultural sites. Closed to dispersed camping. Limited number of recreation permits issued for day hikes and overnight camping as necessary to prevent cultural site damage from over visitation. Overnight campers must pack out their human waste.					
Dark Canyon ACEC	61,660	61,660	0	0	61,660
Values: Scenic, Cultural, Wildlife.					

ACRES OF PUBLIC LAND TO BE MANAGED AS ACECS UNDER THE ALTERNATIVES IN THE MONITCELLO DRMP/DEIS—Continued

ACEC Values and Use Limitations	Alt. A (no action)	Alt. B	Alt. C (preferred)	Alt. D	Alt. E
Limitations: Managed as VRM Class I. Closed to oil and gas leasing, geophysical work, and disposal of mineral materials. Retained in public ownership and classified as segregated from entry (secretarial withdrawal would be requested). Closed to private and (or) commercial use of woodland products except for limited on-site collection of dead wood for campfires on mesa tops. Campfires limited to mesa top with fire pan (no campfires in canyons). Human waste to be packed out. Excluded from livestock use except Fable Valley, where livestock trailing and emergency grazing (severe winter) would be allowed. Closed to OHV use. Improvements conditionally allowed for wildlife habitat, watershed, and vegetative treatments that meet VRM Class I management. Managed to limit recreation use if wildlife habitat or scenic values are being damaged. Subject to conditional fire suppression, with motorized suppression methods used only if necessary to protect life or property.					
Hovenweep ACEC	1,798	2,439	2,439	0	2,439
Values: Cultural, Special Wildlife Habitat.					
Limitations: Cultural properties eligible for the National Register of Historic Places would be avoided as necessary to provide permanent protection. Closed to disposal of mineral materials. Available for livestock use but may be limited if cultural resources are impacted. No surface disturbing habitat, watershed, or vegetation treatments. Any treatment must avoid cultural sites by sufficient margin as to avoid adverse impact. Closed to private and (or) commercial use of woodland products, except for limited on-site collection of dead wood for campfires.					
Indian Creek ACEC	8,510	8,510	3,905	0	8,510
Values: Scenic.					
Limitations: Managed as VRM Class I. Open for mineral leasing subject to NSO. Closed to disposal of mineral materials. Retained in public ownership and classified as segregated from entry (secretarial withdrawal would be requested). Available for geophysical work if VRM Class I can be met. Closed to private and (or) commercial use of woodland products including on-site collection of dead wood for campfires. Closed to OHV use. Dispersed camping not allowed in the Indian Creek Corridor. Camping allowed only in designated sites.					
Lockhart Basin ACEC	0	47,783	0	0	47,783
Values: Scenic.					
Limitations: Managed as VRM Class I. Surface disturbing activities would be prohibited unless VRM Class I objectives can be met. This would apply to mineral leasing NSO decisions, and to geophysical work. Open for mineral leasing subject to NSO. Exemptions may be granted on a case-by-case basis if site-specific NEPA analysis determines that VRM Class I can be met. Surface disturbing activities would be prohibited. Available for geophysical work if VRM Class I can be met. Closed to disposal of mineral materials. Retained in public ownership and classified as segregated from entry (secretarial withdrawal would be requested). Closed to woodland product use except for limited on-site collection of dead wood for campfires.					
Lavender Mesa ACEC	649	649	649	0	649
Values: Relict-vegetation.					

ACRES OF PUBLIC LAND TO BE MANAGED AS ACECS UNDER THE ALTERNATIVES IN THE MONITCELLO DRMP/DEIS—Continued

ACEC Values and Use Limitations	Alt. A (no action)	Alt. B	Alt. C (preferred)	Alt. D	Alt. E
Limitations: Managed as VRM Class II. Non-surface disturbing vegetative treatments allowed to control invasive species and for rehabilitation of disturbed surfaces. Managed as NSO for oil and gas leasing. Open to locatable mineral entry with approved plan of operations (for the sides of the mesa, not the top), subject to stipulations protecting vegetation on the mesa top. No campfires allowed. Managed to limit recreation use if vegetation communities are being adversely impacted.					
Scenic Highway ACEC	79,017	0	0	0	0
Values: Scenic.					
Limitations: Managed as VRM Class I with projects that meet these visual quality standards allowed. Open for mineral leasing subject to NSO with exceptions if VRM Class I objectives cannot be met.					
Shay Canyon ACEC	5488	119	119	0	119
Values: Cultural.					
Limitations: Managed as VRM Class I. Managed as NSO for oil and gas, vegetation, watershed, or wildlife treatments/improvements. Grazing restricted to trailing only. With the exception of side canyons, hiking limited to designated trails. Closed to disposal of mineral materials. Closed to campfires. Closed to private or commercial use of woodland products including on-site collection of dead wood for campfires. Recreation use may be limited if cultural/paleontological resources are impacted. Closed to camping.					
San Juan River ACEC	0	7,590	7,590	0	7,590
Values: Scenic, Cultural, Wildlife, and Natural Systems.					
Limitations: Managed as VRM Classes I, II, and III. Open to oil and gas leasing subject to NSO. Closed to private and (or) commercial use of woodland products except for limited on-site collection of dead wood for campfires; woodland use within the floodplain would be limited to collection of driftwood for campfires. Closed to mineral material disposal. Retained in public ownership and recommended for withdrawal from mineral entry. Managed to limit recreation use if wildlife values are being adversely impacted. Restricted recreational uses to protect cultural, wildlife, and natural processes. This would include closed areas for camping, designated access trails to cultural sites, and prohibiting ropes and other climbing aids for access to cultural sites and nesting raptors.					
Valley of the Gods ACEC	36,800	22,863	22,863	0	22,863
Values: Scenic.					
Limitations: Managed as VRM Class I. Closed to mineral leasing and disposal of mineral materials. Retained in public ownership but recommended for withdrawal from mineral entry. No campfires allowed. Closed to private and (or) commercial use of woodland products.					
Total	552,184	521,142	76,761	0	521,142

Dated: April 26, 2007.

Jeff Rawson,

Utah Associate State Director.

Editorial Note: This document was received at the Office of the Federal Register on October 29, 2007.

[FR Doc. E7–21518 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Scientific Committee (SC)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Vacancies and Request for Nominations.

SUMMARY: The MMS is seeking interested and qualified individuals to serve on its OCS SC during the period of April 29, 2008 through April 28, 2010. The initial 2-year term may be renewable for up to an additional 4 years. The OCS SC is chartered under the Federal Advisory Committee Act to advise the Secretary of the Interior through the Director of the MMS on the appropriateness, feasibility, and scientific value of the OCS

Environmental Studies Program (ESP) and environmental aspects of the offshore energy and marine minerals programs. The ESP, which was authorized by the OCS Lands Act as amended (Section 20), is administered by the MMS and covers a wide range of field and laboratory studies in biology, chemistry, and physical oceanography, as well as studies of the social and economic impacts of OCS energy and marine minerals development. Currently, the work is conducted through award of competitive contracts and interagency and cooperative agreements. The OCS SC reviews the relevance of the information being produced by the ESP and may recommend changes in its scope, direction, and emphasis.

The OCS SC comprises distinguished scientists in appropriate disciplines of the biological, physical, chemical, and socioeconomic sciences. Currently, the OCS SC has four vacancies in the following disciplines: Biological oceanography/marine biology; economics; and physical oceanography. The selections are based on maintaining disciplinary expertise in all areas of research, as well as geographic balance. Demonstrated knowledge of the scientific issues related to OCS oil and gas development is essential. Selections are made by the Secretary of the Interior on the basis of these factors.

Ethics Responsibilities of Members

All members will comply with applicable rules and regulations. The Department of the Interior will provide materials to those members appointed as Special Government Employees, explaining their ethical obligations with which the members should be familiar. Consistent with the ethics requirements, members will endeavor to avoid any actions that would cause the public to question the integrity of the Committee's operations, activities, or advice. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

Interested individuals should send a letter of interest and resume within 30 days to: Ms. Phyllis Clark, Minerals Management Service, Offshore Minerals Management, 381 Elden Street, Mail Stop 4041, Herndon, Virginia 20170. She may be reached by telephone at (703) 787–1716.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: October 12, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E7–21622 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final General Management Plan/ Environmental Impact Statement, Sagamore Hill National Historic Site, Oyster Bay, NY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final General Management Plan/ Environmental Impact Statement, Sagamore Hill National Historic Site.

SUMMARY: Pursuant to Sec. 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service announces the availability of the Final General Management Plan and Environmental Impact Statement (Final GMP/EIS) for Sagamore Hill National Historic Site in New York. Consistent with Federal laws, regulations, and National Park Service policies, the Final GMP/EIS describes the proposed federal action to establish a programmatic framework for park management in the form of a general management plan that is consistent with the purposes of the park as set forth in the park's enabling legislation *An Act to Authorize Establishment of the Theodore Roosevelt Birthplace and Sagamore Hill National Historic Sites* (Pub. L. 87–547; 76 Stat. 217).

The Final GMP/EIS evaluates alternatives to guide the management and development of Sagamore Hill NHS over the next 15 to 20 years. Under Alternative 1—Status Quo, the park would continue to be managed in accordance with existing plans and in compliance with legal and NPS policy mandates. This alternative provides a baseline for evaluating and comparing the other alternatives. Alternative 2—Building Capacity emphasized building the park's capacity to meet its basic visitor service and operational needs. Alternative 3—Past Meets Present, the agency's *preferred alternative*, emphasizes rehabilitation of the park's cultural resources and improvements to its visitor services and facilities to offer expanded opportunities for visitors to explore the site's contemporary relevance in the same context in which they explore its history. The Final GMP/EIS describes the affected environment and evaluates the potential environmental consequences of each alternative. Impact topics evaluated include cultural resources, natural resources, visitor use and experience, park operations, and the socioeconomic environment.

The Draft GMP/EIS was made available for public review and comment in January 2007. A public open house was held in Oyster Bay on February 1, 2007. On March 8, 2007, a ''Notice of Availability'' formally announcing the public availability of the Sagamore Hill National Historic Site Draft General Management Plan/ Environmental Impact Statement was published in the **Federal Register** (72 FR 10555). The public review period ended on May 8, 2007.

DATES: The NPS will prepare a Record of Decision concerning the selection of a management alternative no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final GMP/EIS in the **Federal Register**.

ADDRESSES: The Final GMP/EIS is available on-line at *www.nps.gov/sahi*. Copies of the Final GMP/EIS are available upon request by writing to: Ellen Carlson, Project Planner, National Park Service, Northeast Region, 15 State Street, Boston, MA 02109; e-mailing *ellen_carlson@nps.gov,* or calling (617) 223–5048. The Final GMP/EIS is also available for pick up in person at Sagamore Hill National Historic Site at 20 Sagamore Hill Road, Oyster Bay, New York, at the park's administrative offices in the Old Orchard Museum during regular business hours.

FOR FURTHER INFORMATION CONTACT: Greg Marshall, Superintendent, Sagamore Hill National Historic Site, 20 Sagamore Hill Road, Oyster Bay, NY 11771–1809, phone (516) 922–4452, *greg_marshall@nps.gov.*

SUPPLEMENTARY INFORMATION: A General Management Plan/Environmental Impact Statement (GMP/EIS) proposes a long-term approach to managing Sagamore Hill NHS, consistent with the park's mission and NPS policy and other laws and regulations. NPS planners, park staff, and key park partners collaborated in the development of the Draft GMP/EIS. A previous master plan was prepared for the park in 1963 but was not fully approved. Project scoping for the GMP began in May 2003. Formal public scoping sessions were held in Oyster Bay and NYC in April 2004. A preliminary alternatives newsletter was prepared and distributed in April 2005 followed by two community meetings.

The Draft GMP/EIS was made available for public review and comment in January 2007. The formal public comment period ended on May 8, 2007. A public open house was held in Oyster Bay on February 1, 2007. At that time, the park also hosted a meeting for park neighbors to solicit their feedback. During the comment period, 27 sets of formal written comments were received. The majority of respondents supported one or both of the action alternatives with most expressing their support for the National Park Service's preferred alternative.

The Final GMP/EIS addresses the following issues—improving the visitor experience, broadening and diversifying the park audience, improving operational efficiency, and enhancing resource protection. Key park partners closely involved in the development of planning alternatives include the Theodore Roosevelt Association, the Friends of Sagamore Hill, and the park's Volunteer Advisory Board. The target date for the Record of Decision is fall 2007.

The park's mission is ''to preserve in public ownership and interpret the structures, landscape, collections, and other cultural resources associated with Theodore Roosevelt's Home in Oyster Bay, New York to ensure that future generations understand and appreciate the life and legacy of Theodore Roosevelt, his family, and the significant events associated with him at Sagamore Hill.'' Theodore Roosevelt bought land in Oyster Bay in 1880, where he built his family home and lived until his death in 1919. Throughout his life, Roosevelt attracted national and international figures from every walk of life to this home. Sagamore Hill was the summer White House between 1902 and 1908.

The Final GMP proposes strategies for resource protection and visitor services; identifies development proposals and associated costs; addresses carrying capacity and park boundaries; examines changes in visitor use patterns and visitor experience; and considers the park's relationship with other Theodore Roosevelt-related sites within the general vicinity of the park as well as across the country.

Dated: September 13, 2007.

John A. Latschar,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. E7–21575 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–09–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Giacomini Wetlands Restoration; Point Reyes National Seashore; Marin County, CA; Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared, in conjunction with the California State Lands Commission as co-lead agency, the Final Environmental Impact Statement (EIS) for restoring the Giacomini Wetlands in the Golden Gate National Recreation Area (north district), administered by Point Reyes National Seashore. The Regional Director, Pacific West Region has approved the Record of Decision and supporting Statement of Findings for Wetlands and Floodplains for this restoration project. The formal no-action period was officially initiated June 27, 2007, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS.

Decision: As soon as practicable the Seashore will begin to implement restoration efforts of the ''environmentally preferred'' *Alternative D* as detailed in the Final EIS. The selected plan maximizes ecological restoration while providing public access and overlooks for viewing the restoration area. Work elements include removal of earthern levees and appurtenant infrastructure, and recreation of tidal channels and freshwater breeding habitat for California red-legged frogs. Certain public access features will be maintained or enhanced, and additionally the Seashore will collaborate with the County of Marin (including further conservation planning as appropriate) on additional public access facilities on the southern perimeter of the project area in furtherance of the Countywide Plan.

As documented in the Final EIS, this course of action was deemed to be ''environmentally preferred''. The preferred plan and four alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in December, 2006). The full spectrums of foreseeable environmental consequences were assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, numerous public meetings were hosted. Approximately 200 oral and written comments were received during the scoping phase or in response to the Draft EIS. Key consultations or other contacts which aided in preparing the Draft and Final EIS involved (but were not limited to) the California Coastal Commission, Department of Fish and Game, and State Historic Preservation Office, the Marin County Parks and Open Space, the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Local communities, county and city officials, and interested organizations were contacted extensively during initial scoping and throughout the conservation planning and environmental impact analysis process.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Pt. Reyes National Seashore, Point Reyes, CA 94956; or via telephone request at (415) 464-5100.

Dated: August 16, 2007.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. E7–21576 Filed 11–1–07; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Walnut Canyon National Monument, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Walnut Canyon National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, Pub. L. 91–190, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the General Management Plan, Walnut Canyon National Monument, Arizona. On August 21, 2007, the Regional Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on March 19, 2007. Three alternatives were analyzed in the Draft and Final

Environmental Impact Statements—a no-action and two action alternatives, including the National Park Service preferred alternative. The preferred alternative would preserve untrailed expanses, unfragmented natural systems, and relatively pristine conditions throughout much of the park. It would protect Walnut Canyon as a critical wildlife corridor. Visitation would be managed with the goal of providing quality learning opportunities in an intimate atmosphere while maintaining the health of the canyon ecosystem. The natural soundscape and tranquil setting of the canyon would be enhanced through strategic placement of facilities. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding of no impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Todd Metzger, Acting Superintendent, Flagstaff Area Monuments, 6400 N. Highway 89, Flagstaff, Arizona 86004, (928) 526–1157.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above.

Dated: August 22, 2007.

Michael D. Snyder,

Intermountain Regional Director, National Park Service.

[FR Doc. E7–21574 Filed 11–1–07; 8:45 am]

BILLING CODE 4312–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 20, 2007. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded, by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 19, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

Santa Cruz County

Cowell Lime Works Historic District, 1156 High St, Santa Cruz, 07001220

DISTRICT OF COLUMBIA

District of Columbia

Foxhall Village Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Bounded by Reservoir Rd NW, Glover-Archibald Park, P St NW & Foxhall Rd NW, Washington, 07001221

KANSAS

Chautauqua County

Bradford Hotel, 103 N Chautauqua, Sedan, 07001222

Cheyenne County

Hickert, Henry, Building, 104 W 4th, Bird City, 07001223

Dickinson County

Naroma Court Historic District, 800 N Buckeye; 801, 803, 805 Spruceway; 106 Naroma Ct, Abilene, 07001224

Jewell County

Burr Oak United Methodist Church, NE corner Pennsylvania & Washington Sts, Burr Oak, 07001225

Johnson County

Foster, Herman B., House, 204 W Main St, Gardner, 07001226

Marion County

Meehan, P.H., House, Address Restricted, Tampa, 07001227

Sedgwick County

Bond—Sullivan House, 936 Back Bay Blvd, Wichita, 07001228

Fresh Air Baby Camp, 1229 W 11th St, Wichita, 07001229

Holyoke Cottage, 1704 N Holyoke, Wichita, 07001230

MISSOURI

Jackson County

U.S. Courthouse and Post Office—Kansas City, MO, 811 Grand Blvd, Kansas City, 07001231

MONTANA

Rosebud County

St. Philip's Episcopal Church, 701 Main St, Rosebud, 07001232

NEW YORK

New York County

Van Tassell and Kearney Horse Auction Mart, 126—128 E 13th St, New York, 07001233

TEXAS

Harris County

Almeda Road Bridge over Brays Bayou, (Historic Bridges of Texas MPS) Almeda Rd at Brays Bayou, Houston, 07001234

Telephone Road Bridge over Brays Bayou, (Historic Bridges of Texas MPS) Telephone Rd at Brays Bayou, Houston, 07001235

VIRGINIA

Albemarle County

Southern Albermarle Rural Historic District, Roughly bounded by Rivanna R, VA 20, Green Mt, James R., Blenheim, Jefferson Mill Rolling & Milton Rds & Monroe Pkwy, Charlottesville, 07001236

A request for REMOVAL has been made for the following resource:

NORTH DAKOTA

Walsh County

Odalen Lutherske Kirke, 6 mi W and ¼ mi N of Jct ND 32 and Cty Rte 9, Edinburg vicinity, 05001517

[FR Doc. E7–21620 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES–07–37]

Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of a Final Environmental Impact Statement for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead.

SUMMARY: The Department of the Interior (Department), acting through the Bureau of Reclamation (Reclamation), has issued a final environmental impact statement (Final EIS) on the proposed adoption of specific Colorado River Lower Basin shortage guidelines and coordinated reservoir management strategies to address operation of Lake Powell and Lake Mead, particularly under low reservoir conditions. This action is proposed in order to provide a greater degree of certainty to U.S. Colorado River water users and managers of the Colorado River Basin by providing

detailed and objective guidelines for the operation of Lake Powell and Lake Mead, thereby allowing water managers and water users in the Lower Basin to know when, and by how much, water deliveries will be reduced in drought and other low reservoir conditions. The Department proposes that these guidelines be interim in duration and extend through 2026.

Cooperating agencies are the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, the Western Area Power Administration, and the United States Section of the International Boundary and Water Commission.

DATES: The Department will issue a Record of Decision on implementing the proposed interim guidelines no sooner than December 3, 2007.

ADDRESSES: The Final EIS is electronically available for viewing and copying at Reclamation's project Web site at: *http://www.usbr.gov/lc/region/programs/strategies.html*. Alternatively, a compact disc or hard copy is available upon written request to: Regional Director, Lower Colorado Region, Bureau of Reclamation, Attention: BCOO–1005, P.O. Box 61470, Boulder City, Nevada 89006–1470; fax at (702) 293–8156; or e-mail at *strategies@lc.usbr.gov*.

See the **SUPPLEMENTARY INFORMATION** section of this notice for locations and addresses where copies of the document may be viewed.

FOR FURTHER INFORMATION CONTACT: Terrance J. Fulp, Ph.D., at (702) 293–8500 or e-mail at *strategies@lc.usbr.gov*; and/or Randall Peterson at (801) 524–3633 or e-mail at *strategies@lc.usbr.gov*.

SUPPLEMENTARY INFORMATION: During the period from 2000–2007, the Colorado River has experienced the worst drought conditions in 100 years of recorded history. During this period, storage in Colorado River reservoirs dropped from nearly full to less than 55 percent of capacity as of September 30, 2007. Currently, the Department does not have specific operational guidelines in place to address the operation of Lake Powell and Lake Mead during drought and low reservoir conditions.

Accordingly, through a National Environmental Policy Act (NEPA) process initiated by a **Federal Register** notice dated September 30, 2005 (70 FR 57322), the Department proposed the adoption of specific interim guidelines for Lower Basin shortages and coordinated operations of Lake Powell and Lake Mead. It is anticipated that the proposed federal action will be implemented through the adoption of interim guidelines in effect through 2026 that would be used each year by the Department in implementing the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968, through issuance of the Annual Operating Plan for Colorado River Reservoirs.

The proposed federal action considers four operational elements that collectively are designed to address the purpose and need for the proposed federal action. These elements are addressed in each of the alternatives described and analyzed in the Final EIS. The interim guidelines would be used by the Secretary of the Interior (Secretary) to:

- Determine those circumstances under which the Secretary would reduce the annual amount of water available for consumptive use from Lake Mead to the Colorado River Lower Division states (Arizona, California, and Nevada) below 7.5 million acre-feet (a ''Shortage'') pursuant to Article II(B)(3) of the United States Supreme Court Decree in the case of *Arizona* v. *California*, 547 U.S. 150 (2006);
- Define the coordinated operation of Lake Powell and Lake Mead to provide improved operation of these two reservoirs, particularly under low reservoir conditions;
- Allow for the storage and delivery, pursuant to applicable federal law, of conserved Colorado River system and non-system water in Lake Mead to increase the flexibility of meeting water use needs from Lake Mead, particularly under drought and low reservoir conditions; and
- Determine those conditions under which the Secretary may declare the availability of surplus water for use within the Lower Division states.

The proposed federal action would modify the substance of the existing Interim Surplus Guidelines (ISG), published in the **Federal Register** on January 25, 2001 (66 FR 7772), and would change the term of the ISG from 2016 to 2026.

The purpose of the proposed federal action is to: (1) Improve Reclamation's management of the Colorado River by considering the trade-offs between the frequency and magnitude of reductions of water deliveries, and considering the effects on water storage in Lake Powell and Lake Mead, water supply, power production, recreation, and other environmental resources; (2) provide mainstream U.S. users of Colorado River water, particularly those in the Lower Division states, a greater degree of predictability with respect to the amount of annual water deliveries in future years, particularly under drought and low reservoir conditions; and (3) provide additional mechanisms for the storage and delivery of water supplies in Lake Mead.

The Final EIS presents five action alternatives for potential implementation, plus a No Action Alternative. The action alternatives reflect input from Reclamation staff, the cooperating agencies, stakeholders, members of the general public and other interested parties. The preferred alternative was identified by Reclamation by publication on June 15, 2007, on the dedicated project Web site: (*http://www.usbr.gov/lc/region/programs/strategies.html*), following public comments on the Draft EIS and further analysis.

The preferred alternative proposes: (1) Discrete levels of shortage volumes associated with Lake Mead elevations to conserve reservoir storage and provide water users and managers in the Lower Basin with greater certainty to know when, and by how much, water deliveries will be reduced in drought and other low reservoir conditions; (2) a coordinated operation of Lake Powell and Lake Mead determined by specified reservoir conditions that would minimize shortages in the Lower Basin and avoid the risk of curtailments in the Upper Basin; (3) a mechanism to encourage and account for augmentation and conservation of water supplies, referred to as Intentionally Created Surplus, that would minimize the likelihood and severity of potential future shortages; and (4) the modification and extension of the ISG through 2026.

A Record of Decision implementing the interim guidelines is anticipated to be completed before the end of 2007.

Following publication of this **Federal Register** notice, additional and updated information regarding the content and development of guidelines is anticipated to be provided to the public through the dedicated project Web site, (*http://www.usbr.gov/lc/region/programs/strategies.html*).

Locations Where the Final EIS Is Available for Public Review

- Bureau of Reclamation, Lower Colorado Regional Office, 400 Railroad Avenue, Boulder City, Nevada.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7220, Salt Lake City, Utah.
- Bureau of Reclamation, Phoenix Area Office, 6150 West Thunderbird Road, Glendale, Arizona.

- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, Arizona.
- Bureau of Reclamation Library, Denver Federal Center, 6th Avenue and Kipling, Building 67, Room 167, Denver, Colorado.
- Department of the Interior, Natural Resources Library, 1849 C Street, NW., Washington, DC.
- Yuma County Library, 185 South Main Street, Yuma, Arizona.
- Palo Verde Valley Library, 125 West Chanslor Way, Blythe, California.
- Mohave County Library, 1170 Hancock Road, Bullhead City, Arizona.
- Laughlin Library, 2840 South Needles Highway, Laughlin, Nevada.
- Las Vegas Clark County Library, 833 Las Vegas Boulevard N, Las Vegas, Nevada.
- James I. Gibson Library, 280 Water Street, Henderson, Nevada.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E7–21417 Filed 11–1–07; 8:45 am]

BILLING CODE 4310–MN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458; License No. NPF–47]

In the Matter of: Entergy Gulf States, Inc., Entergy Operations, Inc. (River Bend Station, Unit 1); Order Approving Transfer of Facility Operating License and Conforming Amendment

I.

Entergy Gulf States, Inc. (EGS) and Entergy Operations, Inc. (EOI) are the holders of Facility Operating License NPF–47, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, ''Domestic Licensing of Production and Utilization Facilities.'' The license authorizes the operation of River Bend Station, Unit 1 (RBS or facility), in accordance with terms and conditions specified therein. The facility is located in St. Francisville, West Feliciana Parish, Louisiana. The license authorizes EGS to possess the facility with respect to EGS's ownership of RBS, and EOI to use and operate the facility.

II.

By letter dated May 29, 2007, as supplemented by letters dated August 30 and September 19, 2007, EOI, acting on behalf of EGS and itself, submitted an application to the NRC requesting, pursuant to 10 CFR 50.80, approval of the direct transfer of the license for RBS from EGS to Entergy Gulf States Louisiana, LLC (EGS–LA). EOI also requested, pursuant to 10 CFR 50.90, approval of a conforming license amendment to the RBS, Unit 1, Operating License (NPF–47) to reflect the transfer. The transfer is associated with the planned restructuring of EGS under which ownership of RBS will be transferred from EGS, a Texas corporation, to EGS–LA, Louisiana limited liability company. EOI will continue to operate RBS, and thus there is no transfer of operating authority under the license proposed in the application.

Notice of the requests for approval and an opportunity for a hearing was published in the **Federal Register** on July 9, 2007 (72 FR 37266). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that EGS–LA is qualified to hold the license for RBS to the extent now held by EGS, and that the transfer of the license to EGS–LA described in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated October 26, 2007.

III.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the transfer of the license to EGS–LA, as described herein is approved, subject to the following conditions:

(1) At the time of the closing of the transfer of ownership of and the license for RBS from EGS to EGS–LA, the RBS decommissioning trust agreement(s) shall be amended to reflect EGS–LA as the owner of all the decommissioning trust funds accumulated as of the date of the closing.

(2) Prior to completion of the transfer of ownership of and the transfer for RBS, EGS–LA shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer, is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

It is further ordered that EOI shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the transfer no later than 5 business days prior to such action. Should the transfer of the license not be completed by October 25, 2008, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this action, see the application dated May 29, 2007, the supplemental letters dated August 30 and September 19, 2007, and the safety evaluation dated October 26, 2007, which are 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 accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet on the NRC's Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the document located in ADAMS, should contact the NRC PDR Reference Staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of October, 2007.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E7–21615 Filed 11–1–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting Notice

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold its 184th meeting on November 13–15, 2007, at 11545 Rockville Pike, Rockville, Maryland.

Tuesday, November 13, 2007, Room T–2B3

10 a.m.–10:05 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

10:05 a.m.–12 p.m.: Drift Degradation—Staff Review Approach and Capability (Open)—NRC staff representatives from the Office of Nuclear Materials Safety and Safeguards will discuss the issue of post-emplacement drift degradation at Yucca Mountain.

1 p.m.–4:30 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will discuss potential and proposed ACNW&M letter reports.

Wednesday, November 14, 2007, Room T–2B3

9:30 a.m.–11:30 a.m.: ACNW&M November 2007 Briefing to the Commission (Room O–1G16) (Open)—The ACNW&M members will brief the Commission on their recent and planned activities. The last Commission briefing was held on December 14, 2006.

1 p.m.–2:30 p.m.: Final Proposed Design for a Geologic Repository at Yucca Mountain, Nevada (Open)—A Department of Energy representative will update the Committee on the final design (surface and subsurface facilities) proposed for the forthcoming Yucca Mountain license application.

2:30 p.m.–3:30 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will continue discussion of potential and proposed ACNW&M letter reports.

Thursday, November 15, 2007, Room T–2B1

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10 a.m.: Accounting for Dose Consequence in the State-of-the-Art Reactor Consequence Analysis (SOARCA) Project (Closed) (MTR/NMC)—NRC staff representatives from the Office of Nuclear Regulatory Research will discuss the options for assessment of dose thresholds for latent cancer fatalities of the SOARCA project.

Note: Briefing will be closed pursuant to 5 U.S.C. 552b (c) (9) (B) to discuss pre-decisional documents.

10 a.m.–4:30 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will continue discussion of proposed ACNW&M letter reports.

4:30 p.m.–5 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW&M activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include content of future letters and scope of future Committee Meetings.

Procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54693). In accordance with those procedures, oral or written views may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Dr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. (ET), as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the ACNW&M Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW&M office prior to the meeting. In view of the possibility that the schedule for ACNW&M meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Dias as to their particular needs.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it may be necessary to close a portion of this meeting noted above to discuss pre-decisional documents pursuant to 5 U.S.C. 552b (c) (9) (B).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Dr. Dias.

ACNW&M meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/acnw* (ACNW&M schedules and agendas).

Video teleconferencing service is available for observing open sessions of ACNW&M meetings. Those wishing to use this service for observing ACNW&M meetings should contact Mr. Theron Brown, ACRS/ACNW&M Audio Visual Assistant (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

The ACNW&M meeting dates for Calendar Year 2008 are provided below:

ACNW&M meeting No.	Meeting dates
—	January 2008 (No Meeting).

ACNW&M meeting No.	Meeting dates
186	February 12–14, 2008.
187	March 18–20, 2008.
188	April 8–10, 2008.
189	May 20–22, 2008.
190	June 17–19, 2008.
191	July 22–24, 2008.
—	August 2008 (No Meeting).
192	September 16–18, 2008.
193	October 28–30, 2008.
194	November 18–20, 2008.
195	December 9–11, 2008.

Dated: October 29, 2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–21609 Filed 11–1–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Power Uprates (Susquehanna); Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on November 14, 2007, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss proprietary information pursuant to 5 U.S.C. 552b(c)4 for presentations covering information that is proprietary to PPL Susquehanna, LLC or its contractors such as General Electric, AREVA and Continuum Dynamics, Inc.

The agenda for the subject meeting shall be as follows:

Wednesday, November 14, 2007—1 p.m. until the conclusion of business.

The Subcommittee will discuss the Susquehanna Steam Electric Station Units 1 and 2 extended power uprate application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the PPL Susquehanna, LLC (the licensee, PPL), their contractors (General Electric, AREVA and Continuum Dynamics) and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Ms. Zena Abdullahi (Telephone: 301–415–8716) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:45 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 25, 2007.

Cayetano Santos,

Chief, Reactor Safety Branch, ACRS.

[FR Doc. E7–21593 Filed 11–1–07; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Briefing on Periodicals Rates

AGENCY: Postal Regulatory Commission.

ACTION: Notice of briefing.

SUMMARY: Representatives and associates of the Free Press organization will participate in a briefing with Commissioners and staff on Tuesday, October 30, 2007, beginning at 2:30 p.m., at the Postal Regulatory Commission. The briefing will address issues related to Periodicals rates.

DATES: October 30, 2007.

ADDRESSES: Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Nanci Langley, Director of Public Affairs and Government Relations, Postal Regulatory Commission, 202–789–6887.

Steven W. Williams,

Secretary.

[FR Doc. 07–5445 Filed 11–1–07; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

New Collection: Title: Individual Investor Plain English Survey Project. SEC File No. 270–570 , OMB Control No. 3235–XXXX.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''SEC'' or the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget (''OMB'') for approval.

The SEC's Office of Investor Education and Advocacy seeks to commence a collection of information. The title of this collection is the Individual Investor Plain English Survey Project. This project will conduct focus groups and telephone surveys of individual investors in SEC registered securities, plus similar surveys of non-investors. The project will seek to gauge the level of individual investor satisfaction with current and potential future SEC-mandated disclosures, to learn whether investors and non-investors believe such disclosures are written in plain English and are reader-friendly, and to ask individual investors how such disclosures might be improved. The Commission will use this information in order to gain a comprehensive understanding of a range of views. The SEC intends to hire a professional survey firm to conduct the focus groups and telephone surveys. The total annual reporting and recordkeeping burden of this collection of information is estimated to be less than 1,000 burden hours.

Written comments are invited on: (a) 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; (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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 29, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–21533 Filed 11–1–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15Ba2–5; OMB Control No. 3235–0088; SEC File No. 270–91.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 15Ba2–5 (17 CFR 240.15Ba2–5).

On July 7, 1975, effective July 16, 1975 (*see* 41 FR 28948, July 14, 1975), the Commission adopted Rule 15Ba2–5 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of approximately $80 (i.e., 4 hours × $20).

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 control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: October 29, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21577 Filed 11–1–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56719; File No. SR–Amex–2007–98]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Listing and Trading of Units of the United States 12 Month Oil Fund, LP and the United States 12 Month Natural Gas Fund, LP

October 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 23, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') 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 the Exchange. On September 14, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. On October 25, 2007, the Exchange submitted Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade units (each a ''Unit'' and, collectively, the ''Units'') of each of the United States 12 Month Oil Fund, LP (''12 Month Oil Fund'') and the United States 12 Month Natural Gas Fund, LP (''12 Month Natural Gas Fund'') (each a ''Partnership'' and, collectively, the ''Partnerships'').

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 Amex included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 Exchange proposes to list and trade Units issued by the 12 Month Oil Fund (under the symbol: ''USL'') and the 12 Month Natural Gas Fund (under symbol: ''USN'') pursuant to Amex Rules 1500–AEMI and 1501 through 1505.[3] The Exchange submits that the Units will conform to the initial and continued listing criteria under Rule 1502,[4] specialist prohibitions under Rule 1503 and the obligations of specialists under Rule 1504.

Ownership of a Partnership Unit represents a fractional undivided unit of a beneficial interest in the net assets of

[3] Amex Rule 1500–AEMI provides for the listing of Partnership Units, which are defined as securities, that are: (a) *Issued* by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities; and (b) that are issued and redeemed daily in specified aggregate amounts at net asset value. *See* Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (approving Amex Rules 1500–AEMI and 1501 through 1505 in conjunction with the listing and trading of Units of the United States Oil Fund, LP).

[4] *See* section entitled ''Listing and Trading Rules,'' *infra*.

that Partnership.[5] Each of the net assets of the 12 Month Oil Fund and the 12 Month Natural Gas Fund will consist primarily of investments in futures contracts for crude oil, heating oil, gasoline, natural gas, and other petroleum-based fuels that are traded on the New York Mercantile Exchange (''NYMEX''), Intercontinental Exchange (''ICE Futures'') or other U.S. and foreign exchanges (collectively, ''Futures Contracts''). In the case of the 12 Month Oil Fund, the predominant investments are expected to be based on, or related to, crude oil. Similarly, for the 12 Month Natural Gas Fund, the predominant investments are expected to be based on, or related to, natural gas.

The 12 Month Oil Fund may also invest in other crude oil-related investments such as cash-settled options on Futures Contracts, forward contracts for crude oil, and over-the-counter (''OTC'') transactions based on the price of crude oil, heating oil, gasoline, natural gas, other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, ''Other Crude Oil-Related Investments''). Futures Contracts and Other Crude Oil-Related Investments collectively are referred to as ''Crude Oil Interests.''

Similarly, the 12 Month Natural Gas Fund may also invest in other natural gas-related investments such as cash-settled options on Futures Contracts, forward contracts for natural gas, and OTC transactions based on the price of natural gas, crude oil and other petroleum-based fuels, Futures Contracts and indices based on the foregoing (collectively, ''Other Natural Gas-Related Investments''). Futures Contracts and Other Natural Gas-Related Investments collectively are referred to as ''Natural Gas Interests.''

Each of the 12 Month Oil Fund and the 12 Month Natural Gas Fund will invest in Crude Oil Interests and Natural Gas Interests, respectively, to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations. In pursuing this objective, the primary focus of each Partnership's investment manager, Victoria Bay Asset Management, LLC (''Victoria Bay'' or ''General Partner''), will be the investment in Futures Contracts and the management of its investments in short-term obligations of the United States of two years or less (''Treasuries'') and cash and cash equivalents (collectively, ''Cash'') for margining purposes and as collateral.

[5] Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

12 Month Oil Fund Investment Objective and Policies

The investment objective of the 12 Month Oil Fund is for the changes in percentage terms of the Units' net asset value (''NAV'') to reflect the changes in percentage terms of the price of light, sweet crude oil delivered to Cushing, Oklahoma, as measured by the changes in the average of the prices of twelve crude oil futures contracts traded on NYMEX (the ''Oil Benchmark Futures Contracts''),[6] less the 12 Month Oil Fund's expenses. The Oil Benchmark Futures Contracts consist of the near month contract to expire and the contracts for the following eleven months, for a total of twelve consecutive months' contracts, except when the near month contract is within two weeks of expiration, in which case it will be measured by the futures contracts that are the next month contract to expire and the contracts for the eleven consecutive months following that contract.[7] When calculating the daily movement of the average price of the twelve futures contracts, each contract month will be equally weighted.

The General Partner will employ a ''neutral'' investment strategy intended to track the changes in the price of crude oil regardless of whether the price of crude oil goes up or goes down. The ''neutral'' investment strategy is designed to permit investors to purchase and sell the 12 Month Oil Fund's Units for the purpose of investing indirectly in crude oil in a cost-effective manner and/or to permit participants in the crude oil markets or other industries to hedge the risk of losses in their crude oil investments.

The General Partner will attempt to place the 12 Month Oil Fund's trades in Futures Contracts and Other Crude Oil-Related Investments and otherwise manage the 12 Month Oil Fund's investments so that ''A'' will be within plus/minus 10 percent of ''B'', where:

- A is the average daily change in 12 Month Oil Fund's NAV for any period of 30 successive valuation days, *i.e.*, any day as of which 12 Month Oil Fund calculates its NAV, and
- B is the average daily change in the average of the prices of the Oil Benchmark Futures Contracts over the same period.

[6] The average price is determined by summing up the 12 individual monthly prices and dividing them by 12, and then comparing that result to the prior day's average price determined in the same fashion.

[7] The composition of the Oil Benchmark Futures Contracts will be changed or ''rolled'' over a one day period by selling the near month contract and buying the contract, which at that time is the thirteen month contract.

The Exchange states that an investment in the Units will allow both retail and institutional investors to easily gain exposure to the crude oil market in a cost-effective manner. In addition, the Units are also expected to provide additional means for diversifying an investor's investments or hedging exposure to changes in crude oil prices.

The General Partner believes that market arbitrage opportunities will cause changes in the 12 Month Oil Fund's unit price on the Exchange to closely track changes in the 12 Month Oil Fund's NAV.[8] The General Partner also believes that percentage changes in the 12 Month Oil Fund's NAV will closely track percentage changes in the Oil Benchmark Futures Contracts, less the 12 Month Oil Fund's expenses. The 12 Month Oil Fund will not be operated in a manner such that the per-Unit-NAV will equal, in dollar terms, the dollar price of spot crude oil or any particular futures contract or contracts based on crude oil.

12 Month Natural Gas Fund Investment Objective and Policies

The investment objective of the 12 Month Natural Gas Fund is for the changes in percentage terms of the Units' NAV to reflect the changes in percentage terms of the price of natural gas delivered at the Henry Hub, Louisiana, as measured by the changes in the average of the prices of 12 futures contracts on natural gas traded on NYMEX (the ''Natural Gas Benchmark Futures Contracts''),[9] less the 12 Month Natural Gas Fund's expenses. The Natural Gas Benchmark Futures Contracts consist of the near month contract to expire and the contracts for the following eleven months, for a total of twelve consecutive months' contracts, except when the near month contract is within two weeks of expiration, in which case it will be measured by the futures contracts that are the next month contract to expire and the contracts for the eleven consecutive months following that contract.[10] When calculating the daily movement of the average price of the twelve futures contracts, each contract month will be equally weighted.

The General Partner will employ a ''neutral'' investment strategy intended

[8] *See* section entitled ''Arbitrage,'' *infra*.

[9] The average price is determined by summing up the 12 individual monthly prices and dividing them by 12, and then comparing that result to the prior day's average price determined in the same fashion.

[10] The composition of the Natural Gas Benchmark Futures Contract will be changed or ''rolled'' over a one day period by selling the near month contract and buying the contract which at that time is the thirteen month contract on the same day.

to track the changes in the price of crude oil regardless of whether the price of crude oil goes up or goes down. The ''neutral'' investment strategy is designed to permit investors to purchase and sell the 12 Month Natural Gas Fund's Units for the purpose of investing indirectly in crude oil in a cost-effective manner and/or to permit participants in the crude oil markets or other industries to hedge the risk of losses in their crude oil investments.

The General Partner will attempt to place the 12 Month Natural Gas Fund's trades in Futures Contracts and Other Natural Gas-Related Investments and otherwise manage the 12 Month Natural Gas Fund's investments so that ''A'' will be within plus/minus 10 percent of ''B'', where:

- A is the average daily change in 12 Month Natural Gas Fund's NAV for any period of 30 successive valuation days, *i.e.*, any day as of which 12 Month Natural Gas Fund calculates its NAV, and
- B is the average daily change in the average of the prices of the Natural Gas Benchmark Futures Contracts over the same period.

The Exchange states that an investment in the Units will allow both retail and institutional investors to easily gain exposure to the natural gas market in a cost-effective manner. The Units are also expected to provide additional means for diversifying an investor's investments or hedging exposure to changes in natural gas prices.

The General Partner believes that market arbitrage opportunities will cause changes in the 12 Month Natural Gas Fund's unit price on the Exchange to closely track changes in the 12 Month Natural Gas Fund's NAV.[11] The General Partner also believes that percentage changes in the 12 Month Natural Gas Fund's NAV will closely track percentage changes in the Natural Gas Benchmark Futures Contracts, less the 12 Month Natural Gas Fund's expenses. The 12 Month Natural Gas Fund will not be operated in a manner such that the per-Unit-NAV will equal, in dollar terms, the dollar price of spot natural gas or any particular futures contract or contracts based on natural gas.

Description of the Petroleum-Based Fuels Market

With respect to each of the following petroleum-based commodities, the Exchange states as follows:

Crude Oil. Crude oil is the world's most actively traded commodity. The futures contracts for light, sweet crude oil that are traded on the NYMEX are the world's most liquid forum for crude oil trading, as well as the most liquid futures contracts on a physical commodity. Due to the liquidity and price transparency of crude oil futures contracts, they are used as a principal international pricing benchmark. The futures contracts for light, sweet crude oil trade on the NYMEX[12] in units of 1,000 U.S. barrels (42,000 gallons) and, if not closed out before maturity, will result in delivery of crude oil to Cushing, Oklahoma, which is also accessible to the world market by two major interstate petroleum pipeline systems.

The price of crude oil is established by the supply and demand conditions in the global market overall and, more particularly, in the main refining centers of Singapore, Northwest Europe, and the U.S. Gulf Coast. Demand for petroleum products by consumers, as well as agricultural, manufacturing and transportation industries, determines demand for crude oil by refiners. Since the precursors of product demand are linked to economic activity, crude oil demand will tend to reflect economic conditions. However, other factors such as weather also influence product and crude oil demand. The price of crude oil has historically exhibited periods of significant volatility.

Gasoline. Gasoline is the largest single volume refined product sold in the U.S. and accounts for almost half of national oil consumption. The Gasoline Futures Contract, listed and traded on the NYMEX, trades in units of 42,000 gallons (1,000 barrels) and is based on delivery at petroleum products terminals in the New York harbor, the major East Coast trading center for imports and domestic shipments from refineries in the New York harbor area or from the Gulf Coast refining centers. The price of gasoline is volatile.

Heating Oil. Heating oil, also known as No. 2 fuel oil, accounts for 25% of the yield of a barrel of crude oil, the second largest ''cut'' from oil after gasoline. The heating oil futures contract, listed and traded on the NYMEX, trades in units of 42,000 gallons (1,000 barrels) and is based on delivery in New York harbor, the principal cash market center.

Natural Gas. Natural gas accounts for almost a quarter of U.S. energy consumption. The price of natural gas is established by the supply and demand conditions in the North American market and, more particularly, in the main refining center of the U.S. Gulf Coast. The natural gas market essentially constitutes an auction, where the highest bidder wins the supply. When markets are ''strong'' (*i.e.*, when demand is high and/or supply is low), the bidder must be willing to pay a higher premium to capture the supply. When markets are ''weak'' (*i.e.*, when demand is low and/or supply is high), a bidder may choose not to outbid competitors, waiting instead for later, possibly lower priced, supplies. Demand for natural gas by consumers, and the agricultural, manufacturing and transportation industries, determines overall demand for natural gas. Since the precursors of product demand are linked to economic activity, natural gas demand will tend to reflect economic conditions. However, other factors such as weather significantly influence natural gas demand. The natural gas futures contracts traded on the NYMEX trade in units of 10,000 million British thermal units (''mmBtu'') and are based on delivery at the Henry Hub in Louisiana.

Because of the volatility of natural gas prices, a vigorous basis market has developed in the pricing relationships between the Henry Hub and other important natural gas market centers in the continental United States and Canada.

Structure and Regulation of 12 Month Oil Fund and 12 Month Natural Gas Fund

Each of the 12 Month Oil Fund and the 12 Month Natural Gas Fund is a Delaware limited partnership formed in June 2007. The 12 Month Oil Fund is a commodity pool that will invest in Crude Oil Interests, while the 12 Month Natural Gas Fund is a commodity pool that will invest in Natural Gas Interests. Both are managed by Victoria Bay, a single member Delaware limited liability company, which is wholly owned by Wainwright Holdings, Inc. The General Partner of the Partnerships is registered as a commodity pool operator (''CPO'') with the Commodity Futures Trading Commission (the ''CFTC'') and is a member of the National Futures Association.

Information regarding the Partnerships and the General Partner, as well as detailed descriptions of the manner in which the Units will be offered and sold, and the investment strategy of the 12 Month Oil Fund and the 12 Month Natural Gas Fund, are included in their respective registration statements regarding the offering of the

[11] *See* section entitled ''Arbitrage,'' *infra*.

[12] The Exchange states that NYMEX is the world's largest physical commodity futures exchange and the dominant market for the trading of energy and precious metals.

Units filed with the Commission under the Securities Act of 1933.[13]

Clearing Broker. UBS Securities, LLC, a CFTC-registered futures commission merchant (''FCM''), will execute and clear each Partnership's futures contract transactions and hold the margin related to its Futures Contracts investments (the ''Clearing Broker''). The clearing arrangements between the Clearing Broker and each Partnership are terminable by the Clearing Broker, upon notice. In such an instance, the General Partner may be required to renegotiate with the current Clearing Broker, or make arrangements with other FCMs, if the Partnership(s) intend(s) to continue trading in Futures Contracts or Other Crude Oil-or Natural Gas-Related Investments, as appropriate, at the present level of capacity.

Administrator and Custodian. Under separate agreements with each Partnership, Brown Brothers Harriman & Co. will serve as administrator, registrar, transfer agent and custodian (the ''Administrator'' or ''Custodian''). The Administrator will perform services necessary for the operation and administration of each Partnership, including certain administrative and accounting services as well as the preparation of certain Commission and CFTC reports on behalf of each Partnership. These services include, but are not limited to, investment accounting, financial reporting, broker and trader reconciliation, calculation of the NAV and valuation of Treasuries and cash equivalents used to purchase or redeem Units and other Partnership assets or liabilities. As Custodian, it will (i) receive payments from purchasers of Baskets, (ii) make payments to Sellers for Redemption Baskets, as described below, (iii) hold cash, cash equivalents and Treasuries, as well as collateral posted by each Partnership's derivatives counterparties, and (iv) make transfers of margin and collateral with respect to each Partnership's investments to and from its FCMs or counterparties.

Marketing Agent. ALPS Distributors, Inc., a registered broker-dealer, will be the marketing agent for the Partnerships (''Marketing Agent''). The Marketing Agent will continuously offer, and redeem, Creation and Redemption Baskets, respectively, and will receive and process creation and redemption orders from Authorized Purchasers (as defined below) and coordinate the processing of orders for the creation or redemption of Units with the General Partner and the Depository Trust Company (''DTC'').

Investment Strategy of 12 Month Oil Fund

Investments. The General Partner of the 12 Month Oil Fund believes that it will be able to use a combination of Futures Contracts and Other Crude Oil-Related Investments to manage the portfolio to achieve its investment objective. The General Partner further anticipates that the exact mix of Futures Contracts and Other Crude Oil-Related Investments held by the portfolio will vary over time depending on, among over things, the amount of invested assets in the portfolio, price movements of crude oil, the rules and regulations of the various futures and commodities exchanges and trading platforms that deal in Crude Oil Interests, and innovations in the Crude Oil Interests' marketplace including both the creation of new Crude Oil Interest investment vehicles, and the creation of new trading venues that trade in Crude Oil Interests.

Futures Contracts. The principal Crude Oil Interests to be invested in by the 12 Month Oil Fund are Futures Contracts. The General Partner initially expects the 12 Month Oil Fund to purchase the Oil Benchmark Futures Contracts. The 12 Month Oil Fund may also invest in Futures Contracts in heating oil, crude oil, gasoline, natural gas, and other petroleum-based fuels that are traded on the NYMEX, ICE Futures or other U.S. and foreign exchanges.

The price movements in the Oil Benchmark Futures Contracts have historically closely tracked the investment objective of the 12 Month Oil Fund over both the short-term, medium-term and the long-term. For that reason, the 12 Month Oil Fund anticipates making significant investments in the Oil Benchmark Futures Contracts. The General Partner submits that other Futures Contracts have also tended to track the investment objective of the 12 Month Oil Fund, though not as closely as the Oil Benchmark Futures Contracts.

Other Crude Oil-Related Investments. The 12 Month Oil Fund may also purchase Other Crude Oil-Related Investments such as cash-settled options on Futures Contracts and forward contracts for crude oil, and participate in OTC transactions that are based on the price of crude oil, heating oil, gasoline, natural gas, and other petroleum-based fuels, Futures Contracts and indices based on the foregoing. Option contracts offer investors and hedgers another vehicle for managing exposure to the crude oil market. The 12 Month Oil Fund may purchase options on crude oil Futures Contracts on the principal commodities and futures exchanges in pursuing its investment objective.

In addition to listed options, the Exchange states that there also exists an active OTC market in derivatives linked to crude oil. These OTC derivative transactions are privately-negotiated agreements between two parties. Unlike Futures Contracts or related options, each party to an OTC contract bears the credit risk that the counterparty may not be able to perform its obligations.

The Exchange states that some OTC contracts contain fairly generic terms and conditions and are available from a wide range of participants, while other OTC contracts have highly customized terms and conditions and are not as widely available. Many OTC contracts are cash-settled forwards for the future delivery of crude oil or petroleum-based fuels that have terms similar to the Futures Contracts. Others take the form of ''swaps'' in which the two parties exchange cash flows based on pre-determined formulas tied to the price of crude oil as determined by the spot, forward or futures markets. The 12 Month Oil Fund may enter into OTC derivative contracts whose value may be tied to changes in the difference between the crude oil spot price, the price of Futures Contracts traded on NYMEX, and the prices of non-NYMEX Futures Contracts that may be invested in by the 12 Month Oil Fund.

Investment Strategy of 12 Month Natural Gas Fund

Investments. The General Partner of the 12 Month Natural Gas Fund believes that it will be able to use a combination of Futures Contracts and Other Natural Gas-Related Investments to manage the portfolio to achieve its investment objective. The General Partner further anticipates that the exact mix of Futures Contracts and Other Natural Gas-Related Investments held by the portfolio will vary over time depending on, among over things, the amount of invested assets in the portfolio, price movements of natural gas, the rules and regulations of the various futures and commodities exchanges and trading platforms that deal in Natural Gas Interests, and innovations in the Natural Gas Interests' marketplace including both the creation of new Natural Gas Interest investment vehicles and the creation of new trading venues that trade in Natural Gas Interests.

Futures Contracts. The principal Natural Gas Interests to be invested in by the 12 Month Natural Gas Fund are

[13] *See* 12 Month Oil Fund's Form S–1, filed with the Commission on July 5, 2007 and amended on August 31, 2007 (File No. 333–144348), and 12 Month Natural Gas Fund's Form S–1, filed with the Commission on July 6, 2007 (File No. 333–144409).

Futures Contracts. The General Partner of the 12 Month Natural Gas Fund initially expects to purchase the Natural Gas Benchmark Futures Contracts. The 12 Month Natural Gas Fund may also invest in Futures Contracts in crude oil, natural gas, heating oil, gasoline and other petroleum-based fuels that are traded on the NYMEX, ICE Futures or other U.S. and foreign exchanges.

The price movements in the Natural Gas Benchmark Futures Contracts have historically closely tracked the investment objective of the 12 Month Natural Gas Fund over both the short-term, medium-term and the long-term. For that reason, the General Partner of the 12 Month Natural Gas Fund anticipates making significant investments in the Natural Gas Benchmark Futures Contracts. The General Partner submits that other Futures Contracts have also tended to track the investment objective of the 12 Month Natural Gas Fund, though not as closely as the Natural Gas Benchmark Futures Contracts.

Other Natural Gas-Related Investments. The 12 Month Natural Gas Fund may also purchase Other Natural Gas-Related Investments such as cash-settled options on Futures Contracts and forward contracts for natural gas, and participate in OTC transactions that are based on the price of gasoline, heating oil, crude oil, natural gas, and other petroleum-based fuels, as well as Futures Contracts and indices based on the foregoing. Option contracts offer investors and hedgers another vehicle for managing exposure to the natural gas market. The 12 Month Natural Gas Fund may purchase options on natural gas Futures Contracts on the principal commodities and futures exchanges in pursuing its investment objective.

In addition to listed options, the Exchange states that there also exists an active OTC market in derivatives linked to natural gas. These OTC derivative transactions are privately-negotiated agreements between two parties. Unlike Futures Contracts or related options, each party to an OTC contract bears the credit risk that the counterparty may not be able to perform its obligations.

The Exchange states that some OTC contracts contain fairly generic terms and conditions and are available from a wide range of participants, while other OTC contracts have highly customized terms and conditions and are not as widely available. Many OTC contracts are cash-settled forwards for the future delivery of gasoline or petroleum-based fuels that have terms similar to the Futures Contracts. Others take the form of ''swaps'' in which the two parties exchange cash flows based on pre-determined formulas tied to the price of gasoline as determined by the spot, forward or futures markets. The 12 Month Natural Gas Fund may enter into OTC derivative contracts whose value will be tied to changes in the difference between the natural gas spot price, the price of Futures Contracts traded on NYMEX, and the prices of non-NYMEX Futures Contracts that may be invested in by the 12 Month Natural Gas Fund.

Impact of Accountability Levels and Position Limits.

The Exchange states that the CFTC and U.S. designated contract markets such as NYMEX have established accountability levels and position limits on the maximum net long or net short Futures Contracts in commodity interests that any person or group of persons under common trading control and that these limits are applicable to each of the Partnerships. Accountability levels and position limits are intended, among other things, to prevent a corner or squeeze on a market or undue influence on prices by any single trader or group of traders. The net position is the difference between an individual or firm's open long contracts and open short contracts in any one commodity.

Most U.S. futures exchanges, such as NYMEX, also limit the daily price fluctuation (*i.e.*, daily price limits) for Futures Contracts. The daily price limits establish the maximum amount that the price of a futures contract or an option on a futures contract may vary either up or down from the previous day's settlement price during a particular trading session. Once the daily limit has been reached in a particular futures contract or option on a futures contract, no trades may be made at a price beyond the limit.

The accountability levels for each of the Benchmark Futures Contracts and other Futures Contracts traded on NYMEX are not a fixed ceiling, but rather, a threshold above which NYMEX may exercise greater scrutiny and control over an investor's positions. The current accountability level for investments at any one time in crude oil Futures Contracts (including investments in the Oil Benchmark Futures Contracts) is 20,000 contracts. Similarly, the amount for natural gas Futures Contracts (including investments in the Natural Gas Benchmark Futures Contracts) is 12,000 contracts. If a Partnership exceeds its respective accountability level for investments in either crude oil or natural gas Futures Contracts, as appropriate, NYMEX will monitor the Partnership's exposure and request additional information on its activities including the total size of all positions, investment and trading strategy, and the extent of its liquidity resources. If deemed necessary, NYMEX could order the Partnership to reduce its position back to the accountability level.

If NYMEX orders a Partnership to reduce its position back to the accountability level, or to an accountability level that NYMEX deems appropriate for the Partnership, such accountability level may impact the mix of investments in Crude Oil Interests or Natural Gas Interests made by the 12 Month Oil Fund or the 12 Month Natural Gas Fund, respectively. To illustrate, assume that the Oil Benchmark Futures Contracts and the Unit price of the 12 Month Oil Fund are each $50, and that NYMEX has determined that the 12 Month Oil Fund may not own more than 20,000 contracts in crude oil Futures Contracts. In such case, the 12 Month Oil Fund could invest up to $1 billion of its daily net assets in the Oil Benchmark Futures Contracts (*i.e.*, $50 per unit multiplied by 1,000 (an Oil Benchmark Futures Contract is a contract for 1,000 barrels) multiplied by 20,000 contracts) before reaching the accountability level imposed by NYMEX. Once the daily net assets of the portfolio exceed $1 billion in the Oil Benchmark Futures Contracts, the portfolio may not be able to make any further investments in the Oil Benchmark Futures Contracts, depending on whether NYMEX imposes limits. If NYMEX does impose limits at the $1 billion level (or another level), the 12 Month Oil Fund anticipates that it will invest the majority of its assets above that level in a mix of other Futures Contracts or Other Crude Oil-Related Investments. The above example applies equally to the 12 Month Natural Gas Fund and the Natural Gas Benchmark Futures Contracts.

In addition to accountability levels, NYMEX imposes position limits on contracts held in the last few days of trading in the near month contract. The Exchange states that it is unlikely that a Partnership will run up against such position limits because each Partnership's investment strategy is to exit from the near month contract approximately two weeks before expiration of the contract.

Investment Procedures

The General Partner for each of the 12 Month Oil Fund and the 12 Month Natural Gas Fund anticipates that the use of Other Crude Oil-Related Investments and Other Natural Gas-Related Investments, respectively, together with investments in Futures

Contracts, will produce price and total return results that closely track each Partnership's investment objective.

Counterparty Procedures. To protect themselves from the credit risk that arises in connection with such contracts, the 12 Month Oil Fund and the 12 Month Natural Gas Fund will each enter into agreements, with each counterparty, that provide for the netting of their respective overall exposure to the counterparty, such as the agreements published by the International Swaps and Derivatives Association, Inc. Each Partnership will also require that the counterparty be highly rated and/or provide collateral or other credit support to address the Partnership's exposure to the counterparty. The General Partner will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an OTC contract pursuant to guidelines approved by the General Partner's Board of Directors. The General Partner, on behalf of the Partnerships, will only enter into OTC contracts with (a) members of the Federal Reserve System or foreign banks with branches regulated by the Federal Reserve Board; (b) primary dealers in U.S. government securities; (c) broker-dealers; (d) commodities futures merchants; or (e) affiliates of the foregoing.

Cash, Cash Equivalents and Treasuries. The 12 Month Oil Fund and the 12 Month Natural Gas Fund will invest virtually all of their assets not invested in Crude Oil Interests or Natural Gas Interests, respectively, in cash, cash equivalents, and Treasuries. The cash, cash equivalents and Treasuries will be available for use in meeting each Partnership's current or potential margin and collateral requirements with respect to investments in Crude Oil Interests or Natural Gas Interests, as appropriate. Neither Partnership will use cash, cash equivalents, and Treasuries as margin for new investments unless it has a sufficient amount of cash, cash equivalents, and Treasuries to meet the margin or collateral requirements that may arise due to changes in the value of its currently held Crude Oil Interests or Natural Gas Interests. Other than in connection with a redemption of Units, each Partnership does not intend to distribute cash or property to its Unit holders. Interest earned on cash, cash equivalents, and Treasuries held by a Partnership will be retained by it to pay its expenses, to make investments to satisfy its investment objectives, or to satisfy its margin or collateral requirements.

The Markets for Partnership Units

There will be two markets for investors to purchase and sell Units. New issuances of the Units will be made only in baskets of 100,000 Units (a ''Basket''), or multiples thereof. Each Partnership will issue and redeem Baskets of the Units on a continuous basis, by or through participants who have each entered into an authorized purchaser agreement (''Authorized Purchaser Agreement'' and each such participant, an ''Authorized Purchaser'') [14] with the General Partner, at the NAV per Unit next determined after an order to purchase the Units in a Basket is received in proper form. Baskets may be issued and redeemed on any ''business day'' (defined as any day other than a day on which the Amex, the NYMEX or the New York Stock Exchange (''NYSE'') is closed for regular trading) through the Marketing Agent in exchange for cash and/or Treasuries, which the Custodian receives from Authorized Purchasers or transfers to Authorized Purchasers, in each case, on behalf of a Partnership. Baskets are then separable upon issuance into identical Units that will be listed and traded on the Exchange.[15]

The Units will thereafter be traded on the Exchange similar to other equity securities. Units will be registered in book-entry form through DTC. Trading in the Units on the Exchange will be effected until 4:15 p.m. Eastern time (''ET'') each business day. The minimum trading increment for such Units will be $.01.

Each Authorized Purchaser, and each distributor, offering and selling newly issued Units as part of the distribution of such Units, is required to comply with the prospectus delivery and disclosure requirements of the Securities Act of 1933, as well as the requirements of the Commodities Exchange Act (''CEA''), including the requirement that prospective investors provide an acknowledgement of receipt of such disclosure materials prior to the payment for any newly issued Units.

Calculation of Partnership NAV. The Administrator will calculate NAV as follows: (1) Determine the current value of each Partnership's assets and (2) subtract the liabilities of each Partnership. The NAV will be calculated shortly after the close of trading on the Exchange using the settlement value [16] of Futures Contracts traded on the NYMEX as of the close of open-outcry trading on the NYMEX at 2:30 p.m. ET, and for the value of other Crude Oil Interests or Natural Gas Interests, depending on the Partnership, and Treasuries and cash equivalents, the value of such investments as of the earlier of 4 p.m. ET or the close of trading on the NYSE. The NAV is calculated by including any unrealized profit or loss on Futures Contracts and Other Crude Oil-Related Investments and Other Natural Gas Related-Investments, as the case may be, and any other credit or debit accruing to a Partnership but unpaid or not received by such Partnership. The NAV is then used to compute all fees (including the management and administrative fees) that are calculated from the value of Partnership assets. The Administrator will calculate the NAV per Unit by dividing the NAV by the number of Units outstanding.

When calculating NAV, the Administrator will value Futures Contracts based on the closing settlement prices quoted on the relevant commodities and futures exchange and obtained from various major market data vendors such as Bloomberg or Reuters. The value of the Other Crude Oil-Related Investments or Other Natural Gas-Related Investments, for purposes of determining the NAV, will be based upon the determination of the Administrator as to the fair market value. Certain types of Other Crude Oil-Related Investments and Other Natural Gas-Related Investments, such as listed options on Futures Contracts, have closing prices that are available from the exchange upon which they are traded or from various market data vendors. Other Crude Oil-Related Investments and Other Natural Gas-Related Investments will be valued based on the last sale price on the exchange or market where traded. If a contract fails to trade, the value shall be the most recent bid quotation from the third-party source. Some types of Other Crude Oil-Related Investments and Other Natural Gas-Related Investments, such as forward contracts, do not trade on established exchanges but typically have prices that are widely available from third-party sources. The Administrator may make use of such third-party sources in calculating a fair market value of these Other Crude Oil-Related Investments and Other Natural Gas-Related Investments.

[14] An ''Authorized Purchaser'' must be (i) a registered broker-dealer or other market participant, such as a bank or other financial institution, that is exempt from broker-dealer registration and (ii) a DTC Participant.

[15] The Exchange expects that the number of outstanding Units will increase and decrease as a result of creations and redemptions of Baskets.

[16] *See* Rules 6.52 and 6.52A of the NYMEX Rulebook.

Certain types of Other Crude Oil-Related Investments and Other Natural Gas-Related Investments, such as OTC derivative contracts such as ''swaps'' also do not have established exchanges upon which they trade and may not have readily available price quotes from third parties. Swaps and other similar derivative or contractual-type instruments will be first valued at a price provided by a single broker or dealer, typically the counterparty. If no such price is available, the contract will be valued at a price at which the counterparty to such contract could repurchase the instrument or terminate the contract. In determining the fair market value of such derivative contracts, the Administrator may make use of quotes from other providers of similar derivatives. If these are not available, the Administrator may calculate a fair market value of the derivative contract based on the terms of the contract and the movement of the underlying price factors of the contract.

Calculation of the Basket Amount. Baskets will be issued in exchange for Treasuries and/or cash in an amount equal to the NAV per Unit times 100,000 Units (the ''Basket Amount''). Baskets will be delivered by the Marketing Agent to each Authorized Purchaser only after execution of the Authorized Purchaser Agreement.

Units in a Basket are issued and redeemed in accordance with the Authorized Purchaser Agreement. Authorized Purchasers that wish to purchase a Basket must transfer the Basket Amount, for each Basket purchased, to the Custodian (the ''Deposit Amount''). Authorized Purchasers that wish to redeem a Basket will receive an amount of Treasuries and/or cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the ''Redemption Amount'').

On each business day, the Administrator will make available, immediately prior to the opening of trading on the Exchange, the Basket Amount for the creation of a Basket based on the prior day's NAV. At or about 4 p.m. ET on each business day, the Administrator will determine the Basket Amount for orders placed by Authorized Purchasers received before 12 p.m. ET that day. Because orders to purchase and/or redeem Baskets must be placed by 12 p.m. ET, but the Basket Amount will not be determined until shortly after 4 p.m. ET, on the date the purchase order or redemption order, as applicable, is received, Authorized Purchasers will not know the total payment required to create or redeem a Basket, as applicable, at the time they submit such irrevocable purchase and/or redemption order. This is similar to exchange-traded funds and mutual funds. The 12 Month Oil Fund's and the 12 Month Natural Gas Fund's registration statements disclose that NAV and the Basket Amount could rise and fall substantially between the time an irrevocable purchase order and/or redemption order is submitted and the time the Basket Amount is determined.[17]

Shortly after 4 p.m. ET on each business day, the Administrator, Amex, and the General Partner will disseminate the Basket Amount (for orders placed during the day) together with the NAV for the Units.[18] The Basket Amount and the NAV are communicated by the Administrator to all Authorized Purchasers via facsimile or electronic mail message. Concurrently, the Amex will also disclose the NAV and Basket Amount on its Web site at *http://www.amex.com*. The Basket Amount necessary for the creation of a Basket will change from day to day. On each day that the Amex is open for regular trading, the Administrator will adjust the Deposit Amount as appropriate to reflect the prior day's Partnership NAV and accrued expenses. The Administrator will then determine the Deposit Amount for a given business day.

Calculation and Payment of the Deposit Amount. The Deposit Amount of Treasuries and/or cash will be in the same proportion to the total net assets of each Partnership as the number of Units to be created is in proportion to the total number of Units outstanding as of the date the purchase order is accepted. The General Partner will determine the requirements for the Treasuries that may be included in the Deposit Amount and will disseminate these requirements at the start of each business day. The amount of cash that is required is the difference between the aggregate market value of the Treasuries required to be included in the Deposit Amount as of 4 p.m. ET on the date of purchase and the total required deposit.

All purchase orders must be received by the Marketing Agent by 12 p.m. ET for consideration on that business day. Delivery of the Deposit Amount, *i.e.*, Treasuries and/or cash, to the Administrator must occur by the third business day following the purchase order date (T+3).[19] Thus, the General Partner will disseminate shortly after 4 p.m. ET on the date the purchase order was properly submitted, the amount of Treasuries and/or cash to be deposited with the Custodian for each Basket.

Calculation and Payment of the Redemption Amount. The Units will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Purchaser will be required to accumulate enough Units to constitute a Basket (*i.e.*, 100,000 Units). An Authorized Purchaser redeeming a Basket will receive the Redemption Amount. Upon the surrender of the Units and payment of applicable redemption transaction fee,[20] taxes or charges, the Custodian will deliver to the redeeming Authorized Purchaser the Redemption Amount. The Redemption Amount of Treasuries and/or cash will be in the same proportion to the total net assets of each Partnership as the number of Units to be redeemed is in proportion to the total number of Units outstanding as of the date the redemption order is accepted. The General Partner will determine the Treasuries to be included in the Redemption Amount. The amount of cash that is required is the difference between the aggregate market value of the Treasuries required to be included in the Redemption Amount as of 4 p.m. ET on the date of redemption and the total Redemption Amount. All redemption orders must be received by the Marketing Agent by 12 p.m. ET on the business day redemption is requested and are irrevocable. Delivery of the Basket to be redeemed to the Custodian and payment of the Redemption Amount will occur by the third business day following the redemption order date (T+3).

Arbitrage

The Exchange believes that the Units will not trade at a material discount or premium to a Unit's NAV based on potential arbitrage opportunities. Due to the fact that the Units can be created and redeemed only in Baskets at NAV, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any

[17] The General Partner states that the price of crude oil or natural gas futures may fluctuate 5% or more between 12 noon, the cutoff for creation and redemption orders, and 2:30 p.m., the close of trading on NYMEX. As explained further below (*see* section entitled ''Arbitrage,'' *infra*), the Exchange does not anticipate such price movements to impact the arbitrage process.

[18] The Exchange will obtain a representation from each Partnership that its NAV and other relevant pricing information will be disclosed to all market participants at the same time.

[19] Authorized Purchasers are required to pay a transaction fee of $1,000 for each order to create one or more Baskets.

[20] Authorized Purchasers are required to pay a transaction fee of $1,000 for each order to redeem one or more Baskets.

premiums or discounts that may exist from time to time.[21]

Dissemination and Availability of Information

Futures Contracts. The daily settlement prices for NYMEX-traded Futures Contracts are publicly available on NYMEX's Web site at *http://www.nymex.com.* The Exchange will also include on its Web site at *http://www.amex.com* a hyperlink to NYMEX's Web site for the purpose of disclosing futures contract pricing. In addition, various market data vendors and news publications publish futures prices and related data. The Exchange represents that quote and last sale information for the Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that real-time futures data is available by subscription from Reuters and Bloomberg. NYMEX also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the Futures Contracts are also available on NYMEX's Web site and the ICE Futures Web site at *http://www.icefutures.com.*

Partnership Units. The Exchange's Web site at *http://www.amex.com,* which is publicly accessible at no charge, will contain the following information: (1) The prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price[22] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (3) calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the Commission or required by the CFTC; and (6) other applicable quantitative information.

Portfolio Disclosure. The 12 Month Oil Fund's and the 12 Month Natural Gas Fund's total portfolio composition will be disclosed each business day that the Amex is open for trading on their respective Web sites at *http://www.unitedstates12monthoilfund.com* and *http://www.unitedstates12monthnaturalgasfund.com,* respectively. The 12 Month Oil Fund's Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name and value of each Crude Oil Interest, the specific types of Crude Oil Interests and characteristics of such Crude Oil Interests, Treasuries, and amount of cash and cash equivalents held in the portfolio of the 12 Month Oil Fund. The 12 Month Natural Gas Fund's Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name and value of each Natural Gas Interest, the specific types of Natural Gas Interests and characteristics of such Natural Gas Interests, Treasuries, and amount of cash and cash equivalents held in the portfolio of the 12 Month Natural Gas Fund. The public Web site disclosure of the portfolio composition of each of the 12 Month Oil Fund and the 12 Month Natural Gas Fund will coincide with the disclosure by the Administrator on each business day of the NAV for the Units and the Basket Amount (for orders placed during the day) for each Partnership. Therefore, the same portfolio information will be provided at the same time on the public Web site for each Partnership as well as in the facsimile or electronic mail message to Authorized Purchasers containing the NAV and Basket Amount (''Daily Dissemination''). The format of the public Web site disclosure and the Daily Dissemination will differ because the public Web site will list all portfolio holdings while the Daily Dissemination will provide the portfolio holdings in a format appropriate for Authorized Purchasers, *i.e.*, the exact components of a Creation Unit.

As described above, each Partnership's NAV will be calculated and disseminated daily. The Amex also intends to disseminate for each Partnership on a daily basis by means of the Consolidated Tape Association (''CTA'')/Consolidated Quote High Speed Lines information with respect to the Indicative Partnership Value (as discussed below), recent NAV, Units outstanding, the Basket Amount and the Deposit Amount. The Exchange will also make available on its Web site daily trading volume, closing prices and the NAV. The closing price and settlement prices of the Futures Contracts held by each Partnership are also readily available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.amex.com* to each Partnership's Web site.

Indicative Partnership Value. In order to provide updated information relating to each Partnership for use by investors, professionals and persons wishing to create or redeem the Units, the Exchange will disseminate through the facilities of the CTA an amount representing, on a per-Unit-basis, the current indicative value of the Basket Amount (the ''Indicative Partnership Value'').[23] Consistent with Amex Rule 1502, the Indicative Partnership Value for each Partnership will be disseminated on a per-Unit-basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Partnership Value will be calculated based on the Treasuries and cash required for creations and redemptions (*i.e.*, NAV per Unit x 100,000) adjusted to reflect the price changes of the relevant Benchmark Futures Contracts.

The Indicative Partnership Value is based on open outcry trading of the relevant Benchmark Futures Contracts on NYMEX. Open-outcry trading on the NYMEX closes daily at 2:30 p.m. ET while NYMEX's energy futures contracts are traded on the Chicago Mercantile Exchange's CME Globex® electronic trading platform on a twenty-four hour basis.[24] After the close of open outcry on NYMEX at 2:30 p.m., the Indicative Partnership Value will reflect changes to the relevant Benchmark Futures Contracts as provided for through CME Globex®. The value of the relevant Benchmark Futures Contracts will be available on a 15-second delayed basis during the time that a Unit trades on the Exchange.

While NYMEX is open for trading, the Indicative Partnership Value can be expected to closely approximate the value per Unit of the Basket Deposit. However, during Amex trading hours

[21] The Exchange states that arbitrage opportunities may arise whenever the market price of a Partnership is higher (or lower) than its expected fair market value, which is based on the price of the underlying commodity futures. Authorized Purchasers may effectively lock-in an arbitrage spread by selling (or buying) the Units while, at the same time buying (or selling), the related commodity futures. This arbitrage activity may occur not only at the time of an irrevocable creation or redemption order, but throughout the day. Accordingly, the Exchange believes that arbitrage activity should not be affected by price movements in the underlying commodity assets between the cutoff for creation and redemption orders and the close of futures trading, following which the Basket Amount is determined.

[22] The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[23] The Exchange proposes to amend Amex Rule 1500–AEMI(b) to define ''Indicative Partnership Value'' as an estimate, updated at least every 15 seconds, of the value of a Partnership Unit of each series.

[24] CME Globex® (''Globex'') is an open-access marketplace that operates virtually 24 hours each trading day. Electronic trading on Globex is conducted from 6 p.m. ET Sunday through 5:15 p.m. ET Friday each week. There is a 45-minute break each day between 5:15 p.m. ET and 6 p.m. ET.

when the Futures Contracts have ceased trading in NYMEX's open outcry, spreads and resulting premiums or discounts may widen and, therefore, increase the difference between the price of the Units and the NAV of the Units. The Exchange submits that the Indicative Partnership Value disseminated during Amex trading hours, on a per-Unit-basis, should not be viewed as a real-time update of the NAV, which is calculated only once daily. The Exchange believes that dissemination of the Indicative Partnership Value based on the Basket Deposit provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Units trading on the Exchange or the creation or redemption of the Units.

Partnership Termination Events

Each Partnership shall continue in effect from the date of its formation in perpetuity, unless sooner terminated upon the occurrence of any one or more of the following events: (1) The death, adjudication of incompetence, bankruptcy, dissolution, withdrawal, or removal of a General Partner who is the sole remaining General Partner, unless a majority in interest of limited partners within ninety (90) days after such event elects to continue the Partnership and appoints a successor general partner; or (2) the affirmative vote of a majority in interest of the limited partners to terminate the partnership, subject to certain conditions.

Upon termination of the Partnership, holders of the Units will surrender their Units and the assets of the Partnership shall be distributed to the Unit holders pro rata in accordance with the value of the Units, in cash or in kind, as determined by the General Partner.

Purchases and Redemptions in Baskets

In the Information Circular, members and member organizations will be informed that procedures for purchases and redemptions of Units in Baskets are described in the Prospectus and that Units are not individually redeemable but are redeemable only in Baskets or multiples thereof.

Listing and Trading Rules

Each Partnership will be subject to the criteria in Amex Rule 1502 for initial and continued listing of the Units. The Exchange will require a minimum of 100,000 Units to be outstanding at the start of trading. The Exchange expects that the initial price of a Unit will be $50.00.[25] The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity and to further each Partnership's objective to seek to provide a simple and cost effective means of accessing the commodity futures markets. The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[26]

The Amex original listing fee applicable to the listing of Units for each Partnership is $5,000. In addition, the annual listing fee applicable under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of Units in all series of each Partnership outstanding at the end of each calendar year.

Amex Rule 154–AEMI, ''Orders in AEMI,'' paragraph (c)(ii), provides that stop and stop limit orders to buy or sell a security the price of which is derivatively priced based upon another security or index of securities, may be elected by a quotation, as set forth in subparagraphs (c)(ii) (1)–(4) of Rule 154–AEMI. The Units will be deemed eligible for this treatment.

The Exchange states that Amex Rule 126A–AEMI, which will apply to trading of the Units, complies with Rule 611 of Regulation NMS, which requires among other things, that the Exchange adopt and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations.[27]

Consistent with the treatment of trust issued receipts (''TIRs''), Specialist transactions of the Units made in connection with the creation and redemption of Units will not be subject to the prohibitions of Amex Rule 190, ''Specialist's Transactions with Public Customers.'' [28] The Units will generally be subject to the Exchange's stabilization rule, Rule 170–AEMI, ''Registration and Functions of Specialists,'' except that specialists may buy on ''plus ticks'' and sell on ''minus ticks,'' in order to bring the Units into parity with the underlying commodity or commodities and/or futures contract price. The Exchange notes that Commentary .01 to its Rule 1503, ''Specialist Prohibitions,'' sets forth this limited exception to Rule 170–AEMI.

The trading of the Units will be subject to certain conflict of interest provisions set forth in Amex Rules 1503 and 1504. Rule 1503 provides that the prohibitions in Rule 175(c) apply to a specialist in the Units so that the specialist or affiliated person may not act or function as a market-maker in an underlying asset, related futures contract or option or any other related derivative. An exception to the general prohibition in Rule 1503 provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting flow of material, non-public market information between itself and the specialist member organization, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a specialist in the Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. Rule 1504 provides that specialists handling Units provide the Exchange with all necessary information relating to their trading in underlying physical assets or commodities, related futures or options on futures, or any other related derivatives. In addition, members and member organizations will be subject to Commentary .03 to Amex Rule 1500–AEMI prohibiting such member or member organizations from acting as a market maker from off-floor through the use of multiple limit orders.

Trading Halts

If an Indicative Partnership Value is not being disseminated by one or more major market data vendors, the Exchange may halt trading during the day in which the interruption to the dissemination of such Indicative Partnership Value occurs. If the interruption to the dissemination of an Indicative Partnership Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Prior to the commencement of trading, the Exchange will issue an Information Circular to members informing them of, among other things, Exchange policies regarding trading

[25] Each Partnership expects that the initial Authorized Purchaser will purchase the initial Basket of 100,000 Units at the initial offering price per Unit of $50.00. On the date of the public offering and thereafter, each Partnership will continuously issue Baskets consisting of 100,000 Units to Authorized Purchasers at NAV.

[26] *See* 17 CFR 240.10A–3.

[27] *See* Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (SR–Amex–2005–104) (implementing a new hybrid market structure for equities and exchange-traded funds known as the ''Auction & Electronic Market Integration'').

[28] The Commission notes that Commentary .05 to Amex Rule 190 provides an exemption from the prohibitions stated in that rule for securities issued by a trust listed pursuant to Amex Rules 1200–AEMI and 1201–1202, 1200A–AEMI and 1201A–1205A, or 1200B and 1201B–1205B.

halts in the Units. First, the Information Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the Information Circular will advise that, in addition to the parameters set forth in Rule 117, the Exchange will halt trading in the Units if trading in the underlying Benchmark Futures Contracts is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. Additionally, the Exchange represents that it will cease trading in the Units if any of the condition in Amex Rule 1502(b)(ii) or (iii) exist (*i.e.*, if there is a halt or disruption in the dissemination of the Indicative Partnership Value and/or underlying Oil Benchmark Futures Contracts and/or Natural Gas Benchmark Futures Contracts).

Suitability

The Information Circular will inform members and member organizations of the characteristics of the Units and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required, in connection with recommending transactions in the Units, to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

Information Circular

The Amex will distribute an Information Circular to its members in connection with the trading of each Partnership's Units. The Information Circular will discuss the special characteristics, and risks, of trading in the Units. Specifically, the Information Circular, among other things, will discuss what the Units are, how a Basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Units prior to, or concurrently with, the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per-Unit-Indicative Partnership Value, trading information, and applicable suitability rules. The Information Circular will also explain that each Partnership is subject to various fees and expenses described in the relevant Registration Statements. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and describe the regulatory framework relating to the trading of crude oil, natural gas, heating oil, gasoline, or other petroleum-based fuels and crude oil- and natural gas-based futures contracts and related options.

The Information Circular will also notify members and member organizations about the procedures for purchases and redemptions of Units in Baskets, and that Units are not individually redeemable but are redeemable only in Baskets or multiples thereof. The Information Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Units. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Circular will disclose that the NAV for Units will be calculated shortly after 4 p.m. ET each trading day.

Surveillance

The Exchange submits that its surveillance procedures are adequate to deter and detect violations of Exchange rules relating to the trading of the Units. The surveillance procedures for the Units will be similar to those used for units of the United States Oil Fund, LP and the United States Natural Gas Fund, LP [29] as well as other commodity-based trusts, TIR and exchange-traded funds. In addition, the surveillance procedures will incorporate and rely upon existing Amex surveillance procedures governing options and equities. The Exchange currently has in place a comprehensive surveillance sharing agreement with each of NYMEX and ICE Futures for the purpose of providing information in connection with trading in, or related to, futures contracts traded on NYMEX and ICE Futures, respectively. To the extent that a Partnership invests in Crude Oil Interests or Natural Gas Interests traded on other exchanges, the Amex will enter into comprehensive surveillance sharing agreements with those particular exchanges.[30]

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [31] in general, and furthers the objectives of Section 6(b)(5),[32] of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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 neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

[29] *See* Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (approving Amex Rules 1500–AEMI and 1501 through 1505 in conjunction with the listing and trading of Units of the United States Oil Fund, LP) and 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR–Amex–2006–112) (approving the listing and trading of Units of the United States Natural Gas Fund, LP).

[30] The Exchange represents that each of the Partnerships will only invest in futures contracts on markets where the Exchange has entered into the appropriate comprehensive surveillance sharing agreements.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Amex has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

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–Amex–2007–98 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–Amex–2007–98. 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 Exchange. 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–Amex–2007–98 and should be submitted on or before November 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21619 Filed 11–1–07; 8:45 am]

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[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56715; File No. SR–CBOE–2007–119]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

October 29, 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 4, 2007, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (''Exchange Notice'') as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the initial and continued listing and trading on the Exchange of options on Index Multiple Exchange Traded Fund Shares (''Index Multiple Units'') and Index Inverse Exchange Traded Fund Shares (''Index Inverse Units''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange 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 III below. The Exchange 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 the proposed rule change is to revise Rules 5.3, *Criteria for Underlying Securities,* and 5.4, *Withdrawal of Approval of Underlying Securities,* to enable the listing and trading on the Exchange of options on Index Multiple Units and Index Inverse Units. Index Multiple Units seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. Index Inverse Units seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Index Multiple Units and Index Inverse Units differ from traditional exchange-traded fund shares or ''Units'' in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. The ProShares Ultra Funds, which currently trades on the American Stock Exchange (''Amex'') is an example of an Index Multiple Unit. Amex also currently lists for trading Index Inverse Units, namely the Short Funds and the UltraShort Funds.[3]

[3] *See* Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (approving the listing and trading of Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (approving the listing and trading of the UltraShort Funds). The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve

Continued

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple Units or Index Inverse Units may hold a combination of financial instruments, including, among other things: stock index futures contracts; options on futures; options on securities and indexes; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the ''Financial Instruments''). The underlying portfolios of Index Multiple Units generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets is devoted to Financial Instruments that are intended to create the additional needed exposure to such underlying index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Index Inverse Units will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the ''Money Market Instruments'').

Currently, Interpretation and Policy .06 to Rule 5.3 provides securities deemed appropriate for options trading shall include shares or other securities (''Units'') that are traded on a national securities exchange or through the facilities of a national securities association and are defined as an NMS stock under Rule 600 of Regulation NMS, and that (i) represent interests in registered investment companies (or series thereof) organized as an open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolio of securities (of that hold securities in one of more other registered investment companies that themselves hold such portfolios of securities); or (ii) represent interests in a trust or other similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units'').

The Exchange proposes to amend Interpretation and Policy .06 to Rule 5.3 to expand the type of options to include the listing and trading of options based on Index Multiple Units and Index Inverse Units that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments. Index Multiple Units and Index Inverse Units will continue to otherwise satisfy the listing standards in Rule 5.4. The Exchange also proposes to make non-substantive, technical changes to Interpretation and Policy .06 to and to delete duplicative rule text from Interpretation and Policy .06(ii) to Rule 5.3. In addition, the Exchange proposes to remove the reference to a ''national securities association'' in Interpretation and Policy .06 to Rule 5.3.

As set forth in proposed amended Interpretation and Policy .06 to Rule 5.3, Index Multiple Units and Index Inverse Units must be traded on a national securities exchange and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS. In addition, Index Multiple Units and Index Inverse Units must meet either: (i) The criteria and guidelines under Interpretation and Policy .01 to Rule 5.3; or (ii) be available for creation or redemption each business day in cash or in kind from the investment company at a price related to net asset value. In addition, the investment company shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of the Financial Instruments) needed to be deposited have not been received by the investment company, provided the authorized creation participant has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Unit which underlies the option as described in the prospectus.

The Exchange's current continuing listing standards for options on Units will continue to apply.

The Exchange proposes to amend Interpretation and Policy .08 to Rule 5.4 to indicate that the index or portfolio may consist of securities, Financial Instruments and/or Money Market Instruments. The Exchange also seeks to delete reference to ''national securities association'' set forth in Interpretation and Policy .08(b) to Rule 5.4.

Under the applicable continued listing criteria in Interpretation and Policy .08 to Rule 5.4, options on Units may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Units, there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which Units are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Units shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Index Multiple Units or Index Inverse Units, if the Units cease to be an ''NMS stock'' as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or the Units are halted from trading on their primary market.

The expansion of the types of investments that may be held by Index Multiple Units or Index Inverse Units under Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits [4] or margin.[5]

This proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust.[6] The Exchange believes the ability to trade options on Index Multiple Units and Index Inverse Units will provide investors with greater risk management tools. The proposed amendment to the Exchange's listing criteria for options on Units is necessary to ensure that the Exchange will be able to list options on the Units of the ProShares Trust as well as other Index

investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) or an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment result, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (−200%) of the underlying benchmark index.

[4] *See* Rules 4.11, *Position Limits*, and 4.12, *Exercise Limits*.

[5] *See* Rule 12.3, *Margin Requirements*.

[6] *See* supra at Note 3.

Multiple Units or Index Inverse Units that may be introduced in the future.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Index Multiple Unit options and Index Inverse Unit options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to 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

CBOE 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 purpose 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 neither solicited nor received written comments on the proposed rule change.

III. 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–CBOE–2007–119 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–CBOE–2007–119. 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 offices of the Exchange. 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–CBOE–2007–119 and should be submitted on or before November 23, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and in particular, the requirements of section 6(b) of the Act.[10] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Surveillance

The Commission notes that the Exchange has represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading in Index Multiple Units options and Index Inverse Units options. In addition, the Exchange represented that the expansion of the types of investments that may be held by Index Multiple Units or Index Inverse Units under Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits[12] or margin.[13]

Listing and Trading Options on Fund Shares

The Commission notes that, pursuant to the proposed rule change, the Exchange represented that the current continuing listing standards for options on Units will continue to apply. These provisions include requirements regarding initial and continued listing standards, suspension of opening transactions, and trading halts. Proposed amended Interpretation and Policy .06 to Rule 5.3, would require that Index Multiple Units and Index Inverse Units must be traded on a national securities exchange and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS.[14]

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust.[15] The Commission believes that the ability to trade options on the Index Multiple Units and Index Inverse Units will provide investors with additional risk management tools. The Commission further believes that the proposed amendment to the Exchange's listing criteria for options on Exchange Traded Fund Shares will ensure that the Exchange will be able to list options on the Funds of the ProShares Trust as well as other Index Multiple Units and Index Inverse Units that may be introduced in the future, thereby affording investors greater investment choices.

The Commission finds good cause for approving this proposal before the

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Rules 4.11, *Position Limits*, and 4.12, *Exercise Limits*.

[13] *See* Rule 12.3, *Margin Requirements*.

[14] 17 CFR 242.600(b)(47).

[15] *See* supra at Note 3.

thirtieth day after the publication of notice thereof in the **Federal Register**, The Commission notes that it recently has approved a substantially similar proposal.[16] This proposed rule filing does not raise any new, unique or substantive issues from those raised in the prior filing that would preclude the trading of the options on Index Multiple Units or Index Inverse Units on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these types of options.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–2007–119) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21567 Filed 11–1–07; 8:45 am]

BILLING CODE 8011–01–P

[16] *See* Securities Exchange Act Release No. 56650 (October 12, 2007), 72 FR 59123 (October 18, 2007) (approving SR–Amex–2007–35). *See also* SR–ISE–2007–87 (pending rule filing proposing similar amendment to options listing criteria).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56714; File No. SR–Phlx–2007–70]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Rule 1034, Minimum Increments

October 29, 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 September 5, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 Phlx. On October 11, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Rule 1034, Minimum Increments, to decrease the size of the minimum quoting and trading increments applicable to the Exchange's U.S. dollar-settled foreign currency options (''FCOs'').

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and *http://www.phlx.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, Phlx 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. Phlx 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 the proposed rule change is to provide additional trading opportunities by reducing the minimum increments applicable to the Exchange's U.S. dollar-settled FCOs.[3] Quoting and trading in smaller increments should enable investors to trade U.S. dollar-settled currency options with greater precision as to price. The changes would permit the trading of U.S. dollar-settled FCOs in the same minimum increments that have long been applicable (with one unrelated exception—the physical delivery British pound/Japanese yen option) to the Exchange's physical delivery FCO contracts.

Currently, all U.S. dollar-settled FCOs other than the Japanese yen have minimum increments of $.0010 (expressed as .10) or $.0005 (expressed as .05). Minimum increments for the Japanese yen are $.000010 (also expressed as .10) or $.000005 (expressed as .05). In each case the applicable minimum increment is determined by the price at which the option is quoting. For example, all U.S. dollar-settled FCO contracts (other than options on the Japanese yen) quoting at $.0300 (expressed as 3.00) or higher have a minimum trading increment of $.0010 (expressed as .10), while the minimum increment for these U.S. dollar-settled FCOs quoting under $.0300 (expressed as 3.00) is $.0005 (expressed as .05). These minimum increments were originally established in order to accommodate trading of U.S. dollar-settled FCOs on the Phlx XL platform, which did not have penny trading capability when the rules for the U.S. dollar-settled FCOs were first drafted and filed with the Commission.

The proposed amendments to Rule 1034 would set the minimum increment for U.S. dollar-settled FCOs on currencies other than the Japanese yen at $.0001 and the minimum increment for U.S. dollar-settled FCO contracts on the Japanese yen at $.000001 (in both cases expressed as .01), regardless of the price at which the option is quoting. This change would conform the minimum increments for U.S. dollar-settled FCOs to those applicable currently to the Exchange's physical delivery FCOs. Although U.S. dollar-settled FCOs would be trading in these narrower minimum increments, they would not actually be trading in pennies (the trading increment would actually be much smaller although it would be expressed as .01) and would not be considered part of the Exchange's pilot program currently applicable to certain equity options.[4]

Currently, options on currency futures trade in these smaller trading increments on the Chicago Mercantile Exchange. As a competitive matter, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 8, 2007, the Exchange began trading U.S. dollar-settled options on the British pound and the Euro on the Exchange's electronic trading platform for options, Phlx XL. *See* Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (approving SR–Phlx–2006–34). The Exchange subsequently listed U.S. dollar-settled FCOs on the Australian dollar, the Canadian dollar, the Swiss franc and the Japanese yen. *See* Securities Exchange Act Release No. 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (approving SR–Phlx–2007–34).

[4] The pilot, which permits certain options series to be quoted and traded in increments of $0.01, began on January 26, 2007. *See* Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74). The pilot was extended through September 27, 2007. *See* Securities Exchange Act Release No. 56141 (July 24, 2007), 72 FR 42216 (August 1, 2007) (SR–Phlx–2007–53). The pilot program has been extended again through March 27, 2009. *See* Securities Exchange Act Release No. 56563 (September 27, 2007), 72 FR 56429 (October 3, 2007) (SR–Phlx–2007–62). With one exception all series in options included in the pilot trading at a price of less than $3.00 are currently quoted and traded in minimum increments of $0.01, and those with a price of $3.00 or higher are currently quoted and traded in minimum increments of $0.05. A list of all series of options in the pilot was communicated to membership via Exchange circular.

Exchange seeks the opportunity to offer investors those same, more refined increments. Also, currencies trade on the cash market in these smaller increments. Additionally, as stated above, Phlx customers have been accustomed to trading in these more refined increments in the Exchange's physical delivery FCOs since 1982. Providing these more refined increments would permit Exchange specialists the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to 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 Exchange does not believe that the proposed rule change would 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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–Phlx–2007–70 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–Phlx–2007–70. 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 Phlx. 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–Phlx–2007–70 and should be submitted on or before November 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21578 Filed 11–1–07; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 3, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Lender Advantage Initiative.

No's: N/A.

Frequency: On Occasion.

Description of Respondents: SBA Lenders and SBA loan applicants.

Responses: 4,000.

Annual Burden: 20,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–21614 Filed 11–1–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0080]

Supplementary Agreement on Social Security Between the United States and Sweden; Entry Into Force

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice that on November 1, 2007, a supplementary agreement will enter into force which amends the Social Security agreement between the United States (U.S.) and Sweden that has been in effect since January 1, 1987. The supplementary agreement, which was signed on June 24, 2004, was concluded pursuant to section 233 of the Social Security Act.

When the original agreement was concluded, Sweden had a two-tier Social Security system that consisted of an earnings-related, defined-benefit program and a residence-based, flat-rate benefit program. Recent Swedish legislation restructured the system. People born after 1953 are now covered by a program consisting of three components. The new Swedish system includes an earnings-related, defined-contribution benefit program administered by the government, a program of individual investment accounts, and a guaranteed minimum pension payable if income-based pensions and certain other income fall below specified levels.

The primary purpose of the supplementary agreement is to conform the Swedish benefit provisions of the original agreement to Sweden's new Social Security system. The supplementary agreement also changes the provision that authorizes SSA to take into account Swedish periods of coverage in determining eligibility for U.S. Totalization benefits so that it refers to periods under the new Swedish pension program rather than the old program. The new Swedish Social Security law allows people to qualify for most benefits with very little coverage credit. It is not expected, therefore, that many people will need to have their U.S. and Swedish coverage credits totalized to become eligible for most Swedish benefits.

The supplementary agreement provides that U.S. Social Security benefits will not be counted in applying pension offsets that normally reduce the amount of Swedish disability benefits. Thus, the supplementary agreement will provide U.S. workers enhanced disability benefit protection under the Swedish system at little, if any, additional cost to the U.S. Social Security system.

In addition to the changes in the U.S. and Swedish benefit provisions, the supplementary agreement updates several other provisions to take account of amendments to both U.S. and Swedish laws and to conform the wording of the agreement to the more recent Totalization agreements concluded by the United States. Other changes in the agreement are merely clarifications to reflect the manner in which the agreement is currently applied.

Individuals who wish to obtain copies of the supplementary agreement or want general information about its provisions may visit the Social Security Administration's Web site at *http://www.socialsecurity.gov/international* or may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, Maryland 21235.

Dated: October 29, 2007.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E7–21585 Filed 11–1–07; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832. (SC: 0013XYV) Comments should be sent to the Agency Clearance Officer no later than January 2, 2008.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Power Distributor Monthly and Annual Reports to TVA (3316–0002).

Frequency of Use: Monthly and Annual.

Type of Affected Public: Business or Local Government.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 2,054.

Estimated Total Annual Burden Hours: 3,792.

Estimated Average Burden Hours per Response: 1.8 hours.

Need for and Use of Information: This information collection supplies TVA with financial and accounting information to help ensure that electric power produced by TVA is sold to consumers at rates which are as low as feasible.

Steven A. Anderson,

Senior Manager, IT Planning & Governance, Information Services.

[FR Doc. 07–5462 Filed 11–1–07; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–40]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to provide the public an opportunity to comment on the petition for exemption. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must indicate the docket number and must be received on or before November 23, 2007.

ADDRESSES: You may send comments which indicate Docket Number FAA–2007–0042 by any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail:* Send 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.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring 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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive to *http://www.regulations.gov* in their entirety, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, or labor union).

Docket: To read the entire petition for exemption, background documents, or comments received, go to *http://www.regulations.gov* or 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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb, Transport Airplane Directorate, FAA at 425–227–1134.

This notice is published pursuant to 14 CFR 11.85.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2007–0042.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: §§ 25.305, 25.307(a), 25.601, 25.603(c), 25.613(a)(b), and 25.1103(d).

Description of relief sought: The exemption, if granted, would affect Boeing 737NG airplanes delivered prior to May 2007 and would permit installation of a new engine configuration, improved thrust reverser cascade configuration, or other changes without requiring a complete finding of compliance for the affected areas.

[FR Doc. E7–21621 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cook and DuPage Counties, Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier One Environmental Impact Statement will be prepared for the Elgin O'Hare–West Bypass study in Cook and DuPage Counties, Illinois.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. Diane M. O'Keefe, P.E., Deputy Director of Highways, Region One Engineer, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4000.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT), will prepare a Tier One Environmental Impact Statement (EIS) for the Elgin O'Hare–West Bypass study. The study area for the EIS is generally bounded by I–90, I–294, and I–290. The Tier One EIS will complete a broad analysis of transportation system alternative(s) in the study area and evaluate the environmental impacts at a planning level of detail using a Geographic Information System (GIS).

The primary environmental resources that may be affected are: Residential, commercial, and industrial properties; streams and floodplains; wetlands; and open space. This project is being developed using the Illinois Department of Transportation's Context Sensitive Solutions policy. Alternatives to be evaluated will include (1) taking no action; (2) transit improvements; (3) improvements to local roads; (4) a complete system of improvements including limited access highways on existing and new location, transit, transportation system management strategies, and bicycle and pedestrian facilities.

As part of the EIS process, a scoping meeting for obtaining input from Resource Agencies on level of detail and methodologies to be addressed in the Environmental Impact Statement will be held in December 2007. Additional coordination will occur with the Resource Agencies to identify a date and location for the scoping meeting.

A Stakeholder Involvement Plan (SIP), which will meet the SAFETEA–LU Coordination Plan requirements, will be developed to ensure that a full range of issues related to this proposed project are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area. A project Web site has been established (*http://www.elginohare-westbypass.org*) as one element of the project public involvement program.

Comments or questions concerning this proposed action and the Tier One EIS are invited from all interested parties and should be directed to the FHWA at the address provided above. A public hearing will be held after the Tier One draft EIS is published and made available for public and agency review. Public notice will be given of the time and place of public meetings and hearings.

The Tier One EIS will conclude with a Record of Decision selecting a preferred transportation system alternative(s). Following the Tier One EIS, projects with independent utility may be advanced to Tier Two NEPA documents that will focus on detailed environmental analyses.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 29, 2007.

Norman R. Stoner,

P.E., Division Administrator, Springfield, Illinois.

[FR Doc. 07–5450 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18898]

Comprehensive Safety Analysis 2010 Initiative

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of public listening session.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces a public listening session to obtain feedback from interested parties on the Agency's Comprehensive Safety Analysis 2010 (CSA 2010) initiative, a comprehensive review, analysis, and

restructuring of FMCSA's current commercial motor carrier safety and enforcement programs. FMCSA will use the listening session to brief participants on the direction and progress of CSA 2010, and obtain feedback from its partners and stakeholders. FMCSA also requests comments on the CSA 2010 operational model described in this notice.

DATES: The Public Listening Session will be held on December 4, 2007, from 8 a.m. to 3:30 p.m. Participant registration will be from 8 a.m. to 9 a.m. Written comments must be received by January 31, 2008.

Location: The Public Listening Session will be held near Dallas at the Sheraton Arlington Hotel, 1500 Convention Center Drive, Arlington, Texas 76011. The phone number is 817–261–8200.

ADDRESSES: You may submit comments identified by FDMS Docket ID Number FMCSA–2004–18898 and by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Cathy McNair, Program Manager Assistant, CSA 2010, (202) 366–0790.

SUPPLEMENTARY INFORMATION: *Format of Listening Session:* During the Public Listening Session, FMCSA will describe its progress on CSA 2010 to date. FMCSA will accept comments on the CSA 2010 operational model and any additional information FMCSA should consider for the success of the CSA 2010 initiative.

The session will include a morning plenary session (9 a.m.), and three facilitated breakout sessions. Each breakout session will be run three consecutive times so that all attendees will have the opportunity to participate in all three sessions. Each session will run for 90 minutes, beginning at 10:15 a.m., 12:15 p.m., and 2 p.m. This will allow 15 minutes between each breakout session and 30 minutes for lunch. The three breakout sessions will address specific aspects of the CSA 2010 initiative: (1) Safety Measurement System, (2) Safety Fitness Determination, and (3) Operational Model Test. Attendees will have the opportunity to comment, as well as hear the comments of other stakeholders.

Registration information and instructions: To attend the listening session, attendees can register online at *http://www.fmcsa.dot.gov/csa2010–register.* In addition to registration information, the registration Web site provides additional details about the agenda. If there are any questions, or if an attendee prefers to register via telephone, please contact the registration help desk at (301) 495–8458.

Instructions for submitting written comments: Comments regarding CSA 2010 can be filed with the Federal Docket Management System (FDMS). For detailed instructions on submitting comments see **ADDRESSES** section above. All submissions must include the Agency name and docket identification number for this notice. Note that all comments received will be posted to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Privacy Act: 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 of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000).

Background

In August 2004, FMCSA embarked on CSA 2010—a comprehensive review and analysis of the FMCSA motor vehicle safety compliance and enforcement programs (69 FR 51748, August 20, 2004). The goal of CSA 2010 is the development and deployment of a new operational model, a new approach to using FMCSA resources to identify drivers and motor carriers that pose safety problems and to intervene to address those problems as soon as they become apparent. FMCSA understands how important it is to the success of this initiative to obtain feedback from its partners and stakeholders and other interested parties.

The Agency held a series of public listening sessions on CSA 2010 in September and October of 2004. These sessions were designed to collect public input regarding ways FMCSA could improve its process of monitoring and assessing the safety performance of the motor carrier industry. The majority of participants supported the Agency's goal of improving the current safety fitness determination process through the CSA 2010 initiative. For further information on the public listening sessions held in 2004, visit the FMCSA Web site at *http://www.fmcsa.dot.gov/* (click on the CSA2010 link) and see the final report, ''Comprehensive Safety Analysis Listening Sessions.''

On November 16, 2006, FMCSA held another listening session to gather information and feedback on CSA 2010 from its partners and stakeholders (71 FR 61131, October 17, 2006). The session was held in Washington, DC, with close to 100 attendees that included a cross-section of Federal, state, and local government agencies, motor carriers, industry associations, insurance and consulting firms, and safety advocacy groups. The event included a plenary session and four breakout sessions, which described four major aspects of CSA 2010: (1) Measurement, (2) Safety Fitness Determination, (3) Intervention Selection and Entity Characteristics, and (4) Safety Data and Tracking, Evaluation and Data Validation. Participants at each of the breakout sessions provided valuable information, which FMCSA has taken into account during its continued development of the CSA 2010 operational model. For further information on the public listening sessions held in 2006, visit FDMS Docket Identification Number FMCSA–2004–18898 at *http://www.regulations.gov* and see the final report, ''Comprehensive Safety Analysis 2010, 2006 Listening Session.''

The purpose of the December 2007 public listening session is for FMCSA to brief its stakeholders and partners on the progress that has been made since the listening session in 2006. FMCSA plans to hold additional CSA 2010 listening sessions to continue the process of updating its partners and stakeholders and receive feedback.

Current Operational Model and Its Limitations

FMCSA currently collects several kinds of data on motor carriers, including Federal and state information on crashes and roadside inspections, and enforcement actions. FMCSA uses the data to (1) determine which motor carriers should be selected for on-site compliance reviews, and (2) determine the safety fitness of motor carriers. Currently FMCSA employs SafeStat, an

analytical process that evaluates the safety status of individual motor carriers. SafeStat uses data from a variety of state and Federal sources to measure the relative safety performance and compliance of individual motor carriers in four Safety Evaluation Areas (SEAs): Accident, Driver, Vehicle, and Safety Management. SafeStat is currently used by the FMCSA to identify and prioritize motor carriers for on-site compliance reviews (CRs) and roadside inspections. For a full description of the SafeStat methodology, visit the FMCSA Web site at: *http://ai.fmcsa.dot.gov.*

FMCSA issues a safety fitness determination and a corresponding safety rating as a result of an on-site compliance review (CR). The CR assesses whether a motor carrier's safety management controls are functioning effectively to ensure acceptable compliance with the safety fitness standard found at 49 CFR 385.5. Currently, the safety ratings that can result from a CR are Satisfactory, Conditional, or Unsatisfactory. FMCSA may take enforcement actions against a motor carrier as a result of the CR. A significant limitation of this process is that a motor carrier's safety rating generally cannot change without the conduct of an additional compliance review. As a result, the meaning of a motor carrier's safety rating in terms of being a current assessment of its safety diminishes over time and may be misleading to those that might incorrectly interpret it as a reflection of a motor carrier's current safety status.

FMCSA compliance and safety programs improve and promote safety performance. However, despite increases in the motor carrier population, as well as increased programmatic responsibilities, Agency resources available for these efforts have remained relatively constant over time. Further compounding this limitation in the current process is the fact that the full CR is generally deployed at a carrier's place of business as a one-size-fits-all tool to address what may not be a comprehensive safety problem. In its present structure, the FMCSA compliance review program is resource intensive and reaches only a small percentage of motor carriers. On-site CRs take one safety investigator an average of 3 to 4 days to complete, and are used to determine a motor carrier's safety fitness. At present staffing levels, FMCSA can perform CRs on only a small portion of the 700,000 active interstate motor carriers. These factors have made it increasingly challenging to make sustained improvements to motor carrier safety using existing intervention programs and measurement systems. Moreover, in recent years the decline in the rate of large truck and bus fatalities per 100 million vehicle miles traveled has leveled off.

For these reasons, along with improvements in the quality of data available to FMCSA and improved ways to measure carrier safety, FMCSA is exploring ways through CSA 2010 to improve its current process for monitoring, assessing, and enforcing the safety performance of motor carriers and drivers. The Agency believes that CSA 2010 has the potential to achieve a greater reduction in large truck and bus crashes, and that additional Agency resources would impact this potential crash reduction even more.

Comprehensive Safety Analysis 2010

CSA 2010 is a major FMCSA initiative to improve the effectiveness of the Agency's compliance and enforcement programs. Its ultimate goal is to achieve a greater reduction in large truck and bus crashes, injuries, and fatalities, while making efficient use of the resources of FMCSA and its state partners. In contrast to the Agency's current operational model, CSA 2010 is characterized by (1) a more comprehensive measurement system, (2) a safety fitness determination methodology that is based on performance data and not necessarily tied to an on-site compliance review, and (3) a broader array of progressive interventions. FMCSA believes that CSA 2010 will help the Agency assess the safety performance of a greater segment of the industry and intervene with more carriers to change unsafe behavior earlier.

FMCSA has made significant progress in its development of the CSA 2010 operational model, and is planning on launching a field test of the model beginning in January 2008. There are four major components to CSA 2010: (1) Measurement, (2) Interventions, (3) Safety Fitness Determination, and (4) Information Technology. Each component and its status are described below. While the Agency requests comments on all aspects of the CSA 2010 operational model, there are three specific areas that will be the subjects of the breakout sessions during the upcoming listening session: (1) Safety Measurement System, (2) Safety Fitness Determination, and (3) Operational Model Test. The illustration below demonstrates how the major components of CSA 2010 would work together. In developing the new model FMCSA continues to strive for flexibility, efficiency, effectiveness, innovation, and equity.

CSA 2010 Operational Model

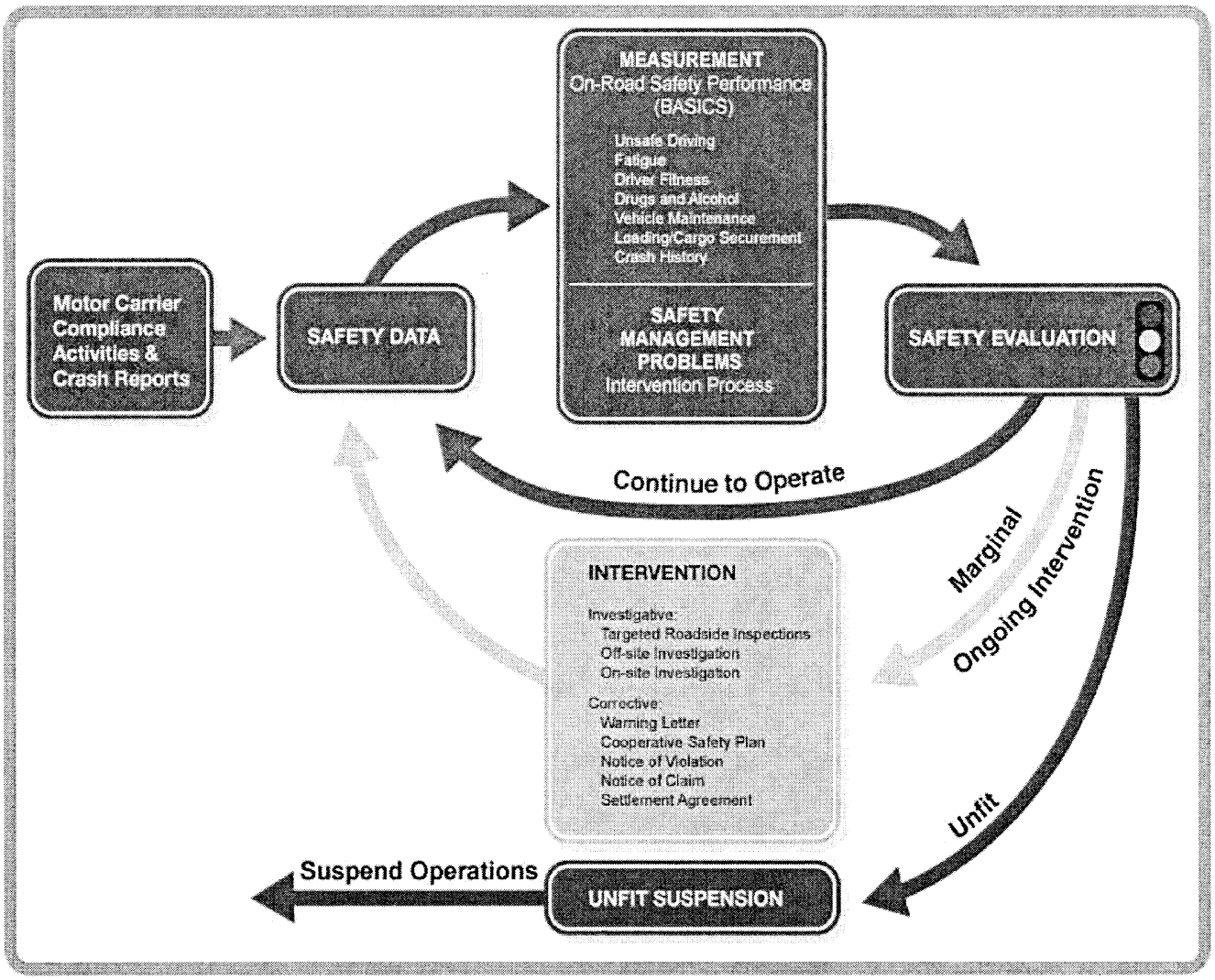


Figure 1

Safety Measurement System—The role of the Safety Measurement System (SMS) within the CSA 2010 operational model is to monitor and quantify the safety performance of motor carriers and drivers through data available in the Motor Carrier Management Information System (MCMIS). Under CSA 2010 these data would include violations found during roadside inspections, traffic enforcement, and the intervention process (discussed below), as well as crashes. SMS would group data into seven Behavioral Analysis Safety Improvement Categories (BASICs), each of which includes regulatory requirements for both motor carriers and drivers.

Unsafe Driving—The operation of commercial motor vehicles in a dangerous or careless manner. Example violations include speeding, reckless driving, improper lane change, and inattention.

Fatigued Driving—The operation of commercial motor vehicles by drivers in non-compliance with the hours-of-service (HOS) regulations. This BASIC focuses on violations of the HOS regulations including violations of driving time limits, driving after reaching on-duty time limits, and failure to maintain complete and accurate log books. This BASIC is not intended to suggest that the Agency has determined that the driver was actually fatigued. Also, instances related to the Fatigued Driving BASIC are distinguished from incidents where unconsciousness or inability to react is brought about by the use of alcohol, drugs, or other controlled substances.

Driver Fitness—The operation of commercial motor vehicles (CMV) by drivers who are unfit to operate a CMV due to lack of training or medical qualifications. Example violations include failure to have a valid and appropriate commercial driver's license and being medically unqualified to operate a CMV.

Controlled Substances and Alcohol—The operation of CMVs by drivers who are in possession of alcohol or illegal drugs, or impaired due to alcohol, illegal drugs, or misuse of prescription or over-the-counter medications. Example violations include the use or possession of controlled substances or alcohol.

Vehicle Maintenance—Commercial motor vehicle failure due to improper or inadequate maintenance. Example violations include brakes, lights, and other mechanical defects, and failure to make required repairs.

Improper Loading/Cargo Securement—CMV incidents resulting from shifting loads, spilled or dropped cargo, and unsafe handling of hazardous materials. Example violations include improper load securement, cargo retention, and hazardous material handling.

Crash—Histories or patterns of crash involvement, including frequency and severity. It is based on information from state-reported crashes.

FMCSA developed the BASICs under the premise that CMV crashes can ultimately be traced to the behavior of motor carriers and drivers. The categories are derived from the existing FMCSA regulatory structure, the Large Truck Crash Causation Study, and other analyses and studies conducted by the Agency.

Four principal steps would be used to assess entity (motor carrier or driver) performance in each BASIC. First, relevant inspection, violation, and crash data from the Motor Carrier Management Information System would be attributed to an entity to create a safety event history. Second, each entity's violations and crashes would be classified into a BASIC. Third, these data would then be time weighted, severity weighted, normalized, and peer grouped to form a quantifiable measure for the entity in each BASIC. In addition, the Safety Measurement System would employ data sufficiency standards to ensure there are enough data to produce meaningful measures of safety performance. Finally, based on a comparison of each entity's BASIC measure to those of its peers, a rank and percentile would be assigned. The motor carrier's score in each BASIC would be based on data from the past 24-months. These steps are illustrated below in Figure 2.

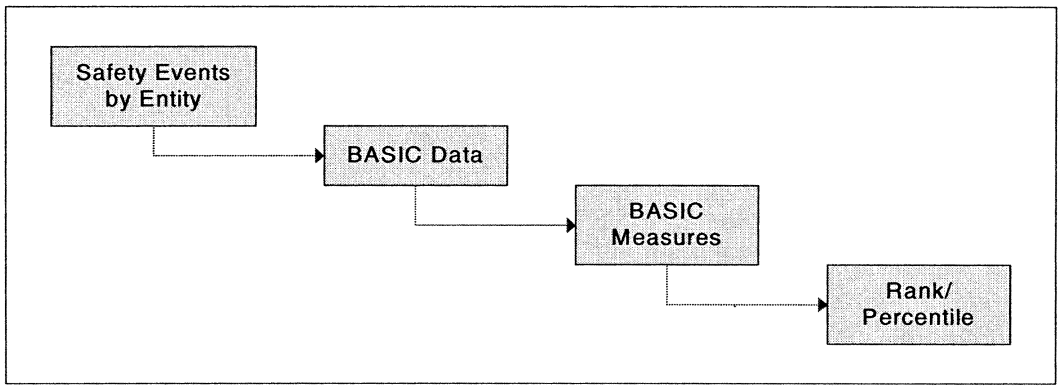


Figure 2

FMCSA anticipates using the SMS results in CSA 2010 to identify and monitor entities with safety problems with respect to its BASICs for inclusion in the intervention process (described below under Interventions). Also, in cases where the SMS results are robust enough to indicate strong crash risk to the public, FMCSA anticipates applying these results along with other factors that could lead to a proposed Unfit safety fitness determination (described below under Safety Fitness Determination). Thus, FMCSA would establish thresholds for each BASIC to trigger the intervention process and play a role in adverse safety fitness determinations.

FMCSA is designing two Safety Measurement Systems—one for carriers, Carrier Safety Measurement System (CSMS), and one for drivers, Driver Safety Measurement System (DSMS). Both systems are in the prototype stage and will be used to support the operational model test discussed below. FMCSA plans to demonstrate the Safety Measurement System during the upcoming listening session.

There are six important differences between the SMS and the Agency's current measurement system, SafeStat:

1. SMS is organized by seven specific behaviors (BASICs) while SafeStat is organized into four general Safety Evaluation Areas (SEAs).
2. SMS identifies safety problems in the same structure in which CSA 2010 addresses those problems, while SafeStat prioritizes carriers for a one-size-fits-all compliance review.
3. SMS uses all safety-based inspection violations while SafeStat uses only out-of-service violations and selected moving violations.
4. SMS uses risk-based violation weightings while SafeStat does not.
5. SMS impacts the safety fitness determination of an entity, while SafeStat has no impact on an entity's safety fitness rating.
6. SMS assesses individual drivers and carriers, while SafeStat assesses only carriers.

Interventions—Over the past year FMCSA has made considerable progress in developing the system of interventions that would be used under CSA 2010. It provides a broad array of tools that would be used in a systematic way to intervene with a carrier and its drivers, depending on the BASIC measures identified by the Safety Measurement System. The interventions are designed to be progressive, increasing in severity and interaction with motor carriers and their drivers. The goal is to use the interventions to reach a larger segment of the motor carrier industry, and to change unsafe behavior early:

Warning Letter—The warning letter would be sent to a motor carrier when its safety performance data exceeds the Safety Measurement System threshold for intervention in one or more BASICs. The letter would advise the motor carrier of the apparent safety problems, and the potential consequences of continued operation in that way. It would also refer the motor carrier to Web-based educational tools and information for self improvement, and the letter would provide the motor carrier with instructions on how to challenge the underlying safety data if the motor carrier believes the data is in error.

Targeted Roadside Inspection—The warning letter would also trigger targeted roadside inspection. The same information on deficient BASICs described in the warning letter would be reflected in roadside information software used by roadside inspectors. This would enable them to monitor the status of those safety problems with that motor carrier, and confirm their existence or correction. This would also help improve the overall effectiveness of roadside inspections.

Off-Site Investigation—The off-site investigation would enable FMCSA and its state partners to evaluate safety problems without the cost of sending enforcement officials to a motor carrier's place of business. It would involve requests for documentation from the carrier and third-parties, and constitute a desktop review of available information to determine the nature and extent of identified safety problems. The off-site investigation would be triggered by persistent safety problems, or those severe enough to warrant investigation.

Focused On-Site Investigation—The focused on-site investigation would take place at the motor carrier's place of business, and would be employed when the carrier exhibits a persistent safety problem in one area. It would enable FMCSA and its state partners to focus on the identified safety problem without spending time and resources where no other safety problems have been identified. It would involve reviewing records, interviewing personnel, analyzing practices, and identifying corrective actions. The focused on-site investigation could be triggered by a continuing deficient or worsening BASIC, or a fatal crash or complaint.

Comprehensive On-Site Investigation—The comprehensive on-site investigation would also take place at the motor carrier's place of business. It would be employed when the carrier exhibits broad and complex safety problems through multiple deficient BASICs, and would be similar to the compliance review conducted under the Agency's current operational model. The comprehensive on-site investigation could be triggered by continuing deficient or worsening multiple BASICs, or a fatal crash or complaint.

Cooperative Safety Plan—The cooperative safety plan (CSP) could be triggered after investigation reveals safety problems for which the motor carrier expresses a *willingness to remedy*. It could be used to support safety improvements before the levying of fines. It would be a structured plan developed and implemented voluntarily by the motor carrier. The CSP would be the motor carrier's action plan to address safety problems. The Agency would monitor the carrier's safety performance, and increase intervention if performance does not improve.

Notice of Violation—The purpose of the notice of violation would be to increase the motor carrier's awareness of enforcement intent on the part of the Agency. It could be useful where the violation is immediately correctable. It would put the carrier on notice of specific regulatory violations. The motor carrier would then have to provide evidence of corrective action, or successfully challenge the identified safety violations. The notice of violation could provide the motor carrier with motivation to change unsafe behavior to avoid a fine.

Notice of Claim—The purpose of the notice of claim is to deter severe or persistent unsafe behavior. It is issued as a formal document and served on the violator to compel compliance. The notice of claim would be triggered by evidence of a severe regulatory violation or history of violations, sufficient to justify assessment of penalties.

Settlement Agreement—The purpose of the settlement agreement is to contractually bind the motor carrier to take actions to improve safety. The motor carrier is given the opportunity to enter into the settlement agreement to avoid fines or suspension of operations. The settlement agreement identifies the consequences to the motor carrier if it does not take the agreed upon action and return to compliance. The agreement would allow the carrier to avoid significant penalties by committing to major safety improvements, for example, with the understanding that failure to comply with the terms of the settlement agreement would result in the immediate imposition of the maximum penalty that would otherwise have been levied.

Unfit Suspension—A motor carrier is placed out of business.

While the above interventions are presented in their logical sequence of severity, it is important to note that FMCSA and its state partners would not necessarily follow this sequence for each carrier. Instead, factors such as carrier history, level of safety performance, motor carrier characteristics, and investigative discretion could influence the intervention selected to encourage change in unsafe behavior.

Another distinguishing feature of CSA 2010 is the investigative process. Under CSA 2010 one of the primary goals during the intervention process would be to identify the root cause of the safety problem under investigation. FMCSA believes that identifying the root causes would in many cases help motor carriers and drivers apply the most effective corrective actions. At the same time, however, it is important to note that FMCSA is a Federal enforcement agency, and that ultimately it is the responsibility of motor carriers and drivers to know, understand, and comply with all applicable safety regulations.

Finally, the new intervention process would also require that areas of essential motor carrier safety management be subject to sampling of motor carrier records. These data could impact a carrier's safety fitness determination, as described below under Safety Fitness Determination. The specific regulatory areas that would be subject to such sampling are listed below in Table 2.

Safety Fitness Determination—Under 49 U.S.C. 31144, FMCSA is required to ''maintain by regulation a procedure for determining the safety fitness of an owner or operator.'' Under the Agency's current operational model, FMCSA uses the compliance review process to issue motor carrier safety ratings, which can be Satisfactory, Conditional, or Unsatisfactory, defined under 49 CFR part 385. Under CSA 2010, safety fitness determinations would be based on safety performance data, and would not necessarily require an on-site investigation like today's compliance review. FMCSA believes that this approach would enable the Agency to assess the safety performance of a greater segment of the motor carrier industry, and make formal safety fitness determinations that are available to the public and more reflective of a motor carrier's current performance.

During the November 2006 listening session, FMCSA discussed the concept of changing the safety fitness determination methodology from the current three tier system of Satisfactory-Conditional-Unsatisfactory to a two tier system of Continue Operation or Unfit. FMCSA pointed out that: (1) The governing legislation requires only that the Agency determine the safety fitness of an owner or operator, (2) the two-tier approach seemed simpler, and (3) it would move away from use of the term Satisfactory. That term can be misperceived by the public as FMCSA approval of a carrier, when in fact the Agency has simply found no patterns of violations during the most recent CR that rise to the Conditional or Unsatisfactory level. Under the Agency's current operational model, the term Satisfactory can also remain with a motor carrier for several years even

though its safety performance may have deteriorated.

Since November 2006, FMCSA has made significant progress in developing a preliminary CSA 2010 safety fitness determination methodology. Under this methodology, FMCSA has dropped the concept of having a two-tier system in favor of the three-tier system. This change is based in large part on comments received in response to last year's public listening session. There were substantial comments indicating the need to make a distinction among carriers within the Continue Operation category, so that the public would know about those carriers with which the Agency is intervening; and to make it clear that sub-par performance, even in a single behavior area, would be identified with an adverse safety fitness determination. After considering these comments, FMCSA has tentatively decided to use the three-tier approach in this CSA 2010 safety fitness determination methodology. However, for purposes of this methodology, the Agency is considering changing the three-tier terminology from Satisfactory-Conditional-Unsatisfactory to Continue Operation-Marginal-Unfit. The Agency believes that this terminology might eliminate the public's possible misperception associated with the term Satisfactory. The term Marginal has been substituted for Conditional because it may be more meaningful in conveying the message, ''marginal in safety performance.'' Likewise the term Unfit may convey a clearer message than the term Unsatisfactory, especially given the Transportation Equity Act for the 21st Century (TEA 21) requirement concerning Unfit motor carriers (65 FR 50919 dated August 22, 2000).

Under this methodology, there would be four major factors that could impact a motor carrier's safety fitness determination: (1) Roadside inspections results as assessed by the Safety Management System (SMS) through stand alone or non-stand alone BASICs, (2) a verifiable crash rate, (3) where essential safety management violations are 10 percent or more of records checked during the intervention process, and (4) fifteen violations which FMCSA believes are so fundamental to ensuring safety that no motor carrier should be allowed to operate if any of these violations are found and not immediately corrected. Factors (1), (2), and (3) would align within the seven BASICs referenced above in the Safety Measurement System. These same factors would be applied to a set of safety fitness criteria to determine a BASIC failure.

A carrier's SMS measures and verifiable crash rate in Factors (1) and (2), respectively, would be applied to a set of Unfit thresholds to determine a BASIC failure. These thresholds would be based on the carrier's absolute BASIC measures and crash rate, as opposed to the relative percentile rankings from the SMS.

Carriers that have received interventions resulting in violations in the areas of essential motor carrier safety management that equal or exceed a 10% violation rate of records check will also result in a BASIC failure.

Table 1 below illustrates how these BASIC failures would interact to determine a motor carrier's safety fitness:

TABLE 1.—PRELIMINARY CSA 2010 SAFETY FITNESS DETERMINATION METHODOLOGY

Stand Alone BASICs: Unsafe Driving Fatigued Driving	Non-Stand Alone *BASICs:* Driver Fitness Drug/Alcohol Cargo Securement Vehicle Maintenance Verifiable Crash Rate	Fifteen Fundamental Violations	Safety Fitness Determination
Number of BASICs: (1) With SMS measure above Unfit threshold, or (2) Where essential safety management violations are 10 percent or more of records checked	*Number of BASICs:* (1) With SMS measure or verifiable crash rate above Unfit threshold, or (2) Where essential safety management violations are 10 percent or more of records checked.	See Table 3 below	Continue Operation. Marginal. Unfit.
1			Unfit.
0	Greater than 1		Unfit.
0	0	1	Unfit.
0	1	0	Marginal.
0	0	0	Continue Operation.

The above methodology makes a distinction between ''stand alone'' and ''non-stand alone'' BASICs. For the ''stand alone'' BASICs a failure in only one of them would result in a proposed Unfit status, whereas for the ''non-stand alone'' BASICs a failure in more than one of them would be required for the proposed Unfit status. The rationale for this distinction is that, although each of the BASICs applies to both carriers and drivers, the ''stand alone'' BASICs are more directly related to driver behavior. Recent research indicates that driver behavior is a major contributing factor in causing crashes. In particular, an effectiveness study on the Safety Management System has shown that carriers with past poor performance in the Unsafe Driving or Fatigue Driving BASICs were subsequently involved in crashes at a considerably higher rate than the overall crash rate of the motor carrier population.

FMCSA believes that this preliminary safety fitness determination methodology would allow the Agency to assess the safety performance of a larger segment of the motor carrier industry. In contrast to the Agency's current methodology, this approach is not tied to an on-site compliance review and it takes into account virtually all of the safety regulations. FMCSA would issue safety fitness determinations on all motor carriers for which it has sufficient data. These would be updated monthly and made available to the public.

Information Technology—Information technology (IT) is the fourth major component of CSA 2010, and COMPASS is the Agency's major IT modernization initiative. CSA 2010 is coordinating closely with the COMPASS program so that the timelines of both programs are synchronized as much as possible. With respect to CSA 2010, COMPASS will track and update the safety performance data from regulated entities as they are received, link relevant data to the

correct entity, validate the data, and provide the mechanisms for correcting data. COMPASS will also support the intervention process as FMCSA and its state partners gather safety performance data on motor carriers and drivers.

Operational Model Test

FMCSA is planning to field test the new CSA 2010 operational model (Op-Model) beginning in January 2008. The purpose of the test is to determine both the feasibility and effectiveness of the new CSA 2010 interventions and Safety Management System.

During the Op-Model test, FMCSA will not be providing any regulatory relief. Motor carriers will not actually be rated under the CSA 2010 safety fitness determination methodology, because that methodology must yet be implemented through rulemaking. Instead, a motor carrier in the Op-Model test with poor safety performance, and found to be unresponsive to the new CSA 2010 interventions, would undergo a compliance review and be rated in accordance with the Agency's current compliance and enforcement process and be subject to fines, penalties, and other actions to bring about compliance.

The test will take place in four states: Colorado, Georgia, Missouri, and New Jersey, which will provide one test state for each of the four FMCSA Service Centers. FMCSA anticipates that this geographic and demographic diversity will help provide a representative cross-section of the motor carrier population. Approximately ten percent of the total number of active carriers and power units in the U.S. are based in these four states. Carriers that are domiciled in these four states will be assigned to one of three groups:

Current Process Group: This is a small number of carriers that is excluded from the test, as discussed below.

Test Group: This is approximately ½ of the remaining carriers.

Control Group: This is approximately ½ of the remaining carriers.

Carriers in the Current Process Group include the following:

Carriers that have had a compliance review within the past 18 months. This should help avoid the question of whether a carrier's performance improvement was due to a CSA 2010 intervention or the compliance review.

SafeStat category A/B carriers. This exclusion would ensure that FMCSA complies with relevant mandates and policies to perform compliance reviews on category A and B motor carriers. It would also help focus the test on carriers with mediocre performance which are not currently being reached. Roadside and accident data that feed the CSA 2010 operational model are already being used and applied to A and B carriers.

Chameleon carriers. These are carriers that attempt to evade enforcement actions or out-of-service orders by re-registering as new entrants and operating under new DOT numbers. Once identified, these carriers would be removed and subject to current compliance and enforcement actions.

The carriers that are thus excluded will continue to be subject to current processes, including compliance reviews. These exclusions are designed to ensure that the two remaining groups of carriers (test and control) are similar in characteristics for evaluation purposes.

After the exclusions described above are made, FMCSA plans to randomly divide the remaining motor carriers domiciled in the test states into two equal sized groups—a test group and a control group. The control group would be addressed through the Agency's current operational model, which involves the use of SafeStat to identify motor carriers for compliance reviews and any required enforcement actions. Those motor carriers in the test group would receive CSA 2010 interventions based on information provided by the Safety Measurement System. Again, motor carries in the test group with poor safety performance, and found to be unresponsive to the new CSA 2010 interventions, would undergo a compliance review and be rated in accordance with the Agency's current compliance and enforcement process. FMCSA anticipates that the number of such carriers would be relatively low, since SafeStat A/B carriers will be initially excluded from the test.

However, as the test progresses, FMCSA is considering adding SafeStat A/B motor carriers to the test. Including A/B carriers would help demonstrate the effectiveness of the new interventions on the group of carriers that FMCSA traditionally targets. It may be that with some of the less time-consuming CSA 2010 interventions, FMCSA could reach A/B carriers more quickly than they would otherwise be reached using the compliance review process. If the new interventions are effective, the carrier could be moved off of the A/B list, thereby eliminating the need for a compliance review. If, however, the carrier does not respond, it would be removed from the test and undergo the traditional compliance review and any necessary enforcement action.

The Agency plans to begin the test in January 2008. The test would have two phases. Phase I would be a six-month startup phase where only three BASICs would be measured: Unsafe Driving, Fatigued Driving, and Vehicle Maintenance. This would allow time for the test to become fully operational by June 2008, when the remaining BASICs would be added.

The test is scheduled to run for 30 months into mid-2010, at which time FMCSA is targeting full CSA 2010 implementation. The thirty-month timeframe is designed to provide sufficient data for statistical purposes with results evaluated at periodic intervals. It is anticipated that full implementation of CSA 2010 could take place through the addition of more states when the safety fitness determination rulemaking is completed. Of course, the Agency will consider the results of the ongoing Op-Model test in fine tuning the rulemaking through notice and comment. Likewise, comments received during the rulemaking will be considered for any needed course correction during the Op-Model test. Initially, the results will likely be more qualitative than quantitative. However, as the test progresses and more data are gathered, the Agency anticipates being able to make quantitative evaluations of the effectiveness of CSA 2010. As with any planned activity, FMCSA will continue to fine tune its plans for the Op-Model test until it commences in January 2008.

FMCSA plans to use approximately 30 Federal and state investigators to carry out the new CSA 2010 interventions in the test group. Training for the investigators involved in the test group is planned for late January 2008, after which the Op-Model test will immediately begin.

Comments Requested

FMCSA requests comments from all interested parties on the CSA 2010 program elements described in this notice. FMCSA is particularly interested in comments related to the Safety Measurement System, interventions, preliminary safety fitness determination methodology, and operational model test. Commenters are requested to provide supporting rationale and data wherever possible.

TABLE 2.—AREAS OF ESSENTIAL MOTOR CARRIER SAFETY MANAGEMENT

1. Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (§ 392.6).
2. Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (§ 392.2)(Safety related violations only).
3. No operating authority (392.9a(a).
4. False reports of records of duty status (§ 395.8(e)).
5. Requiring or permitting driver to drive more than 11 hours (§ 395.3(a)(1)).
6. Requiring or permitting passenger CMV driver to drive more than 10 hours (§ 395.5(a)(1)).
7. Requiring or permitting driver to drive after 14 hours on duty (§ 395.3(a)(2)).
8. Requiring or permitting passenger CMV driver to drive after 15 hours on duty (§ 395.5(a)(2)).
9. Requiring or permitting driver to drive after 60 hours on duty in 7 days (§ 395.3(b)(1)).
10. Requiring or permitting driver to drive after 70 hours on duty in 8 days (§ 395.3(b)(2)).
11. Requiring or permitting passenger CMV driver to drive after 60 hours on duty in 7 days (§ 395.5(b)(1)).
12. Requiring or permitting passenger CMV driver to drive after 70 hours on duty in 8 days (§ 395.5(b)(2)).
13. Requiring or permitting short-haul property CMV driver to drive after 16 hours on duty (§ 395.1(o)).
14. No records of duty status (§ 395.8(a)).
15. Failing to submit record of duty status within 13 days (§ 395.8(i)).
16. Failing to preserve records of duty status for 6 months (§ 395.8(k)).
17. Failing to preserve supporting documents (§ 395.8(k)).
18. Fraudulent or intentional alteration of a supporting document (§ 395.8(k)).
19. Requiring or permitting driver to drive after 70 hours in 7 days (Alaska)(§ 395.1(h)(1)(iii)).
20. Requiring or permitting driver to drive after 80 hours on duty in 8 days (Alaska)(395.1(h)(1)(iv)).
21. Requiring or permitting driver to drive more than 15 hours (Alaska)(§ 395.1(h)(1)(i)).
22. Requiring or permitting driver to drive after being on duty 20 hours (Alaska)(§ 395.1(h)(1)(ii)).
23. Requiring or permitting passenger CMV driver to drive more than 15 hours (Alaska). (§ 395.1(h)(2)(i)).
24. Requiring or permitting passenger CMV driver to drive after 20 hours on duty (Alaska)(§ 395.1(h)(2)(ii)).
25. Requiring or permitting passenger CMV driver to drive after 80 hours on duty in 8 days (Alaska)(§ 395.1(h)(2)(iv)).
26. Requiring or permitting passenger CMV driver to drive after 70 hours on duty in 7 days (Alaska)(395.1(h)(2)(iii)).
27. Failing to investigate driver's background (§ 391.23(a)).
28. Failing to maintain driver qualification file on each driver employed (§ 391.51(a))(Use current guidance of no element of DQ file requirements found).
29. Operating a CMV without a valid CDL (§ 383.23(a))(Safety related loss only).
30. Failing to train hazardous material employees as required (§ 172.704(a) & § 177.800(c)).
31. Using a driver not medically re-examined each 24 months (§ 391.45(b)(1)).
32. Using a driver not medically examined and certified (§ 391.45(a)).
33. Using a driver before receiving a negative pre-employment result (§ 382.301(a)).
34. Failing to perform random alcohol tests at the applicable rate (§ 382.305(b)(1)).
35. Failing to perform random controlled substance tests at the applicable rate (§ 382.305(b)(2)).
36. Using a driver without a return to duty test (§ 382.309).
37. Failing to keep minimum records of inspection and maintenance (§ 396.3(b)).
38. Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (§ 392.9(a)(1)).
39. Transporting a HM without preparing a shipping paper (§ 172.200(a) & § 177.817(a))(no shipping paper at all).
40. Transporting HM in a package with an identifiable release of HM (§ 173.24).
41. Loading a cargo tank with an HM which exceeds the maximum weight of lading marked on the specification plate (§ 173.24b(d)(2)).
42. Loading HM not in accordance with the separation and segregation table (§ 173.30/177.848(d)).
43. Transporting HM in an unauthorized cargo tank (§ 173.33(a)).
44. Transporting or loading two or more materials in a cargo tank motor vehicle which resulted in an unsafe condition (§ 173.33(a)(2)).
45. Transporting a hazardous material in a cargo tank motor vehicle which has a dangerous reaction when in contact with the tank (§ 173.33(b)(1)).
46. Transporting an unacceptable HM shipment (§ 177.801).
47. Failing to attend a cargo tank during loading/unloading (§ 177.834(i)).
48. Offering a cargo tank which has not successfully completed a test or inspection which has become due (§ 180.407(a)).
49. Failing to test and inspect a cargo tank which has been in an accident and has been damaged (§ 180.407(b)(2)).
50. Failing to conduct a pressure test on a cargo tank which has been out of HM service for one year or more (§ 180.407(b)(3)).
51. Failing to test and inspect a cargo tank which has been modified (§ 180.407(b)(4)).
52. Failing to conduct a test or inspection on a cargo tank when required by DOT (§ 180.407(b)(5)).
53. Failing to periodically test and inspect a cargo tank (§ 180.407(c)).

TABLE 3.—FUNDAMENTAL VIOLATIONS

1. Failing to implement an alcohol and/or controlled substance testing program (§ 382.115(a) or (b)).
2. Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (§ 382.211).
3. Using a driver known to have tested positive for a controlled substance (§ 382.215).
4. Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle as defined in Part 383. (§ 383.37(a)).
5. Knowingly allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a commercial motor vehicle (§ 383.51(a)).
6. Operating a motor vehicle transporting property without having in effect the required minimum levels of financial responsibility coverage (§ 387.7(a)).
7. Using a disqualified driver (§ 391.15(a)).
8. Using a physically unqualified driver (§ 391.11(b)(4)).
9. Failing to require a driver to make a record of duty status (§ 395.8(a)) (Complete lack of any records of duty status).
10. Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs are made (§ 396.9(c)(2)).
11. Using a commercial motor vehicle not periodically inspected (§ 396.17(a)). (Complete lack of any periodic inspections).
12. Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (§ 387.31(a)).

TABLE 3.—FUNDAMENTAL VIOLATIONS—Continued

13. Failing to implement a random controlled substances and/or an alcohol testing program (§ 382.305).
14. Failing to correct out-of-service defects listed by a driver in a driver vehicle inspection report before the vehicle is operated again (§ 396.11(c)).
15. Transporting a forbidden material (§ 177.801).

Issued on: October 30, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–21671 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Limitation on Claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for public transportation projects in the following metropolitan areas: Orlando, Florida; Miami, Florida; Salt Lake City, Utah; San Francisco, California; and Binghamton, New York. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Title 23, United States Code (U.S.C.), section 139(l). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Joseph Ossi, Environmental Protection Specialist, Office of Planning and Environment, 202–366–1613, or Christopher Van Wyk, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA), and in other documents in the FTA administrative record for the project. The final agency environmental decision documents—Records of Decision (RODs) or Findings of No Significant Impact (FONSIs)—for the listed projects are available online at *http://www.fta.dot.gov/planning/environment/planning_environment_documents.html* or may be obtained by contacting the FTA Regional Office for the metropolitan area where the project is located. Contact information for the FTA Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, the National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q].

The projects and actions that are the subject of this notice are:

1. *Project name and location:* Central Florida Commuter Rail; Orlando, Florida. *Project sponsor:* Florida Department of Transportation. *Project description:* The Central Florida Commuter Rail project extends 61 miles along the A-line rail corridor of CSX Transportation from the Deland Amtrak station in Volusia County, through downtown Orlando, to Poinciana Industrial Park in Osceola County. Bi-directional commuter rail service would be provided at a total of 16 stations using diesel multiple units (DMUs) in two-or three-car consists operating on 15 minute headways in the peak hours and 60 minute headways during the midday, off-peak hours. Other infrastructure improvements of the project include: A new signalization system, 42 miles of new second track, 16 platform stations of which 11 stations have parking facilities with a total of 4300 spaces, a DMU vehicle storage and maintenance facility, and two end-of-line layover facilities. The project would be built in phases. *Final agency actions:* FONSI signed on April 27, 2007; Section 106 Finding of No Adverse Effect; project-level Air Quality Conformity determination; finding of no significant encroachment on floodplains in accordance with Executive Order 11988; finding of no practicable alternative to new construction in wetlands in accordance with Executive Order 11990; and consultation with the U.S. Department of the Interior (DOI) under Section 7 of the Endangered Species Act, resulting in DOI's issuance of a Biological Opinion. *Supporting documentation:* Central Florida Commuter Rail Transit North/South Corridor Project: Environmental Assessment issued in December 2006.

2. *Project name and location:* Miami North Corridor Metrorail Extension; Miami, Florida. *Project sponsor:* Miami-Dade County Transit (MDT). *Project description:* The project consists of the design and construction of a 9.5-mile heavy rail transit extension of the existing Miami Metrorail system from NW 76th Street to NW 215th Street on or adjacent to NW 27th Avenue. The project is a dual-track, fixed guideway that would be exclusively elevated in the right of way of NW 27th Avenue or in an exclusive MDT-owned right of way adjacent to NW 27th Avenue. The project includes seven new stations of which six stations are configured as center-platform and one as side-platform. *Final agency actions:* ROD signed on April 26, 2007; Section 106 Finding of No Adverse Effect; project-level Air Quality Conformity determination; finding of no disproportionately high and adverse human health or environmental effects on minority and low-income populations in accordance with Executive Order 12898; and finding of no significant encroachment on floodplains in accordance with Executive Order 11988. *Supporting documentation:* Final Environmental Impact Statement: Miami North Corridor issued on March 9, 2007.

3. *Project name and location:* Mid-Jordan Transit Corridor Project; Salt Lake City, Utah. *Project sponsor:* Utah Transit Authority (UTA). *Project description:* The project consists of a 10.6-mile light rail transit (LRT) extension branching from the existing TRAX line between Sandy and Salt Lake City at 6400 South in Murray in Salt Lake County and proceeding to the new Daybreak Development in South Jordan via the cities of Murray, Midvale, West

Jordan and South Jordan. Two new tracks will be constructed along the existing Union Pacific Railroad (UPRR) Bingham Branch corridor from the existing 6400 South/Fashion Place West Station to a new terminal station in Daybreak at approximately 11400 South. The project includes station improvements at the existing 6400 South/Fashion Place West station and nine new stations at Bingham Junction (Midvale Slag Site), Gardner Village, Redwood (West Jordan City Hall), 2700 West, Bangerter (South Station Development), 4800 West, 5600 West, Daybreak North, and Daybreak South. These stations will include feeder bus facilities and 4,200 park-and-ride spaces to be constructed in phases over time by the year 2030. The LRT will use both of the new tracks during transit operating hours, typically from 5 AM to midnight. Freight trains will operate on the same tracks during non-LRT hours. *Final agency actions:* ROD signed on September 24, 2007; Section 4(f) finding; Section 106 Memorandum of Agreement; project-level air quality conformity determination; finding of no practicable alternative to significant encroachment into floodplains in accordance with Executive Order 11988. *Supporting documentation:* Final Environmental Impact Statement: Mid-Jordan Transit Corridor Project issued on July 27, 2007.

4. *Project name and location:* Ed Roberts Campus Project; Berkeley, California. *Project sponsor:* San Francisco Bay Area Rapid Transit District (BART) and the Ed Roberts Campus (ERC). *Project description:* BART and ERC will construct a transit-oriented development on the eastern parking lot of the BART Ashby station in Berkeley. The 3.6-acre parking lot occupies the southern three quarters of the block bounded by Essex Street on the north, Woolsey Street on the south, Adeline on the west, and Tremont on the east. The project includes subdividing the site to construct an 86,000-square-foot, two-story office building, with its principal pedestrian entry at street level on Adeline Street and a separate parking lot for the office building. The office building will occupy the western 1.5 acres of the existing parking lot. The 250 parking spaces for BART customers in the existing parking lot will be replaced by a parking structure with 187 parking spaces. The Ed Roberts Campus incorporates universal design standards that are intended to provide equal access to all people, regardless of their level of ability. The office building will provide tenant spaces for nine disability organizations, a computer lab, a child care center, a fitness center and a caf. *Final agency actions:* FONSI signed on October 1, 2007 and Section 106 Finding of No Adverse Effect. *Supporting documentation:* Environmental Assessment developed in accordance with the NEPA regulation of the U.S. Department of Housing and Urban Development, issued in May 2006 and adopted by FTA in October 2007.

5. *Project name and location:* Binghamton Intermodal Transit Terminal; Binghamton, New York. *Project sponsor:* Broome County, New York. *Project description:* The project consists of the following elements: An 18,000-square-foot building to provide a weather-protected passenger waiting area, ticketing, restrooms, telephones, and other amenities; short-term parking for up to 50 vehicles; 12 bus bays for Broome County Transit buses and 14 bus bays for intercity buses; approximately 1,800 square feet of green space; bicycle storage; and a taxi loading area. The project involves the acquisition of 12 parcels of land, the complete demolition of three existing buildings and the partial demolition of a fourth historic building, the Greyhound Terminal building, to make room for the construction of the new facility. The exterior wall and historic fade on the Chenango Street (east) side of the existing Greyhound Terminal will be retained, rehabilitated and incorporated into the design of the new facility. *Final agency actions:* FONSI signed on June 27, 2007; Section 106 Programmatic Agreement; and finding of no disproportionately high and adverse human health or environmental effects on minority and low-income populations, in accordance with Executive Order 12898. *Supporting documentation:* Environmental Assessment issued in February 2007.

Issued on: October 26, 2007.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. E7–21564 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2006–26009]

Calypso LNG LLC, Calypso Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration (MARAD) and the Coast Guard announce the availability of the Draft Environmental Impact Statement (DEIS) for the Calypso LNG LLC, Calypso Natural Gas Deepwater Port (Calypso) license application. The application describes a project that would be located in the Federal waters of the Outer Continental Shelf in the OCS NG 17–06 (Bahamas) lease area, approximately 8 to 10 miles off the east coast of Florida to the northeast of Port Everglades, in a water depth of 800 to 950 feet. The Coast Guard and MARAD request public comments on the DEIS. Publication of this notice begins a 45-day comment period and provides information on how to participate in the process.

DATES: The public meeting in Fort Lauderdale, FL will be held on November 28, 2007. The public meeting will be held from 6:30 p.m. to 8:30 p.m. and will be preceded by an informational open house from 5 p.m. to 6 p.m. The public meeting may end earlier or later than the stated time, depending on the number of commenters wishing to speak. Material submitted in response to the request for comments on the DEIS must reach the Federal Docket Management Facility by December 17, 2007.

ADDRESSES: The open house and public meeting will be held at: Courtyard by Marriott, North Fort Lauderdale, 2440 W. Cypress Creek Road, Fort Lauderdale, Florida 33309; telephone: 954–772–7770.

The DEIS, the application, and associated documentation are available for viewing at the Federal Docket Management System Web site: *http://regulations.gov* under docket number 26009. The Federal Docket Management System replaces the DOT Docket Management System. Migration to the new system began on October 1, 2007. The DEIS is also available at public libraries in Fort Lauderdale area (Broward County Library which is a federal depository library and Riverland Library in Fort Lauderdale; Dania Beach Library—Paul DeMaio Branch in Dania Beach; Davie/Cooper City Library in Davie; Helen B. Hoffman Plantation Library and West Regional Library in Plantation; Hollywood Library in Hollywood, and Pembroke Pines Library in Pembroke Pines) and Florida State University Marine Laboratory in Sopchoppy, Florida.

Docket submissions for USCG–2006–26009 should be addressed to: Department of Transportation, Docket

Management Facility, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary K. Jager, U.S. Coast Guard, telephone: 202–372–1454, e-mail: *Mary.K.Jager@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402, e-mail: *renee.wright@dot.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearing and Open House

We invite you to learn about the proposed deepwater port at an informational open house, and to comment at a public meeting on the proposed action and the evaluation contained in the DEIS.

In order to allow everyone a chance to speak at the public meeting, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

Written material may be submitted at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management System (FDMS). See ''Request for Comments'' for information about FDMS and your rights under the Privacy Act.

The public meeting location will be wheelchair-accessible. If you plan to attend the open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least three (3) business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on the DEIS. The public hearing is not the only opportunity to comment. In addition to or in place of attending a meeting, comments may be submitted to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the comment period for the DEIS. We will announce the availability of the Final EIS (FEIS) and once again provide the opportunity to review and comment. To receive notice of the FEIS, contact representatives at the public meeting or the Coast Guard representative identified in **FOR FURTHER INFORMATION CONTACT**.

Submissions must include:

- Docket number USCG–2006–26009.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to FDMS, *http://regulations.gov*.
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. Mailed submissions requiring confirmation of receipt should include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (*http://regulations.gov*), and will include any personal information provided. Therefore, submitting this information makes it public. Please read the Privacy Act notice that is available on the FDMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

Docket submissions may be viewed at the Federal Docket Management Facility (see **ADDRESSES**), or electronically on the FDMS Web site.

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for a liquefied natural gas (LNG) deepwater port appears in Volume 71 FR 65031, Monday, November 6, 2006. The Notice of Intent to Prepare an EIS for the proposed action was published in the **Federal Register** in Volume 71 FR 67422, Tuesday, November 21, 2006. The DEIS, application materials and associated comments are available on the docket. Information from the ''Summary of the Application'' from previous **Federal Register** notices is included below for your convenience.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing action of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing decision on the proposed port are: (i) Licensing as proposed (ii) licensing with conditions (including conditions designed to mitigate environmental, safety and security impacts), and (iii) denying the license, which for purposes of environmental review is the ''no-action'' alternative. Alternates examined under NEPA are more fully discussed in the DEIS. The Coast Guard and MARAD are the lead Federal agencies for the preparation of the EIS. Address any questions about the proposed action or the DEIS to the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Summary of the Application

Calypso LNG LLC, proposes to own, construct, and operate a deepwater port, named Calypso, in the Federal waters of the Outer Continental Shelf in the OCS NG 17–06 (Bahamas) lease area, approximately 8 to 10 miles off the east coast of Florida, to the northeast of Port Everglades, in a water depth of approximately 800 to 950 feet. Calypso would consist of a permanently moored unloading buoy system with two (2) submersible buoys separated by a distance of approximately three (3) miles. Each unloading buoy would be permanently secured to eight (8) or nine (9) mooring lines, consisting of wire rope, chain, and buoyancy elements, each attached to anchor points on the sea bed. Anchor points would consist of a combination of suction piles and gravity anchors.

The buoys would be designed to moor and unload (i) transport and regasification vessels (TRVs) and (ii) a storage and regasification ship (SRS). TRVs would be drawn from the existing and future global fleet as compatible with the unloading buoy system. A TRV would moor at the east buoy for four (4) to seven (7) days. When empty it would disconnect from the buoy and leave the port, followed by another full TRV that would arrive and connect to the buoy. The SRS would be a specialized, purpose built LNG carrier designed to accept LNG from conventional LNG carriers from the existing and future global fleet. The SRS would normally remain attached to its mooring buoy. To sustain continuous vaporization, the SRS' cargo tanks would be refilled approximately every two (2) to four (4) days by LNG carriers. The SRS would

detach from the buoy if threatened by a severe storm, such as a hurricane, and move under its own power to safety; then return and reconnect to the buoy and continue operations once the storm danger passed.

Both vessels would be equipped to vaporize LNG cargo to natural gas through an onboard closed loop shell-and-tube vaporization system, and to odorize and meter gas for send-out by means of the unloading buoy to conventional subsea pipelines. The mooring buoys would be connected through the hull of the vessels to specially designed turrets that would enable the vessel to weathervane or rotate in response to prevailing winds, waves, and the current directions. When the vessels are not present the buoys would be submerged approximately 100 feet below the surface.

The unloading buoys would connect through flexible risers and two (2) approximately 2.5 mile long 30-inch flow lines located on the seabed that would connect directly to the Calypso pipeline, a Federal Energy Regulatory Commission (FERC) permitted pipeline, yet to be constructed which would then connect to existing onshore pipeline system.

The Calypso would be capable of delivering natural gas in a continuous flow by having at least one TRV or the SRS regasifying at all times. The system would be designed so that a TRV and the SRS can regasify simultaneously for concurrent unloading of natural gas. Calypso would have an average throughput capacity of approximately 1.1 billion standard cubic feet per day (bcsfd) and a peak delivery capacity of 1.9 bcsfd.

Existing onshore delivery systems would be utilized and no new construction of onshore pipelines or LNG storage facilities are included as part of the proposed deepwater port. Existing shore based infrastructure will be used to facilitate movement of personnel, equipment, supplies, and disposable materials between the Terminal and shore.

Construction of the deepwater port would be expected to take three (3) years should a license be issued. The deepwater port, if licensed, would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 25 years.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://regulations.gov.*

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: October 29, 2007.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–21602 Filed 11–1–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35084]

Kansas City Terminal Railway Company—Acquisition Exemption—BNSF Railway Company

Kansas City Terminal Railway Company (KCT), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by purchase from BNSF Railway Company approximately 5.5 miles of rail line, extending from milepost 5.78 near Sheffield Junction to the end of the track at milepost 11.23 near Blue Valley, in Jackson County, MO.

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35085, *Kansas City Transportation Company LLC—Lease and Operation Exemption—Kansas City Terminal Railway Company,* wherein Kansas City Transportation Company LLC seeks to lease from KCT and to operate the line that KCT is purchasing from BNSF.

Based on projected revenues for the line, KCT expects to remain a Class III rail carrier after consummation of the proposed transaction. KCT certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. Because the projected annual revenues of the line, together with KCT's projected annual revenue, will exceed $5 million, KCT certified, on September 21, 2007, that it had sent the required notice of the transaction to the national and local offices with employees on the affected lines and posted a copy of the notice at the workplace of the employees on the affected lines on September 20, 2007.

KCT states that it intends to consummate the transaction on or after November 20, 2007. The earliest this transaction may be consummated is November 20, 2007, the effective date of the exemption (60 days after KCT certified its compliance with the labor notice requirements of 49 CFR 1150.42(e)).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than November 13, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35084, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 30, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–21568 Filed 11–1–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35085]

Kansas City Transportation Company LLC—Lease and Operation Exemption—Kansas City Terminal Railway Company

Kansas City Transportation Company LLC (KCTL), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Kansas City Terminal Railway Company (KCT) and operate approximately 5.5 miles of rail line from milepost 5.78 near Sheffield Junction to the end of the line at milepost 11.23 near Blue Valley, in Jackson County, MO.

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35084, *Kansas City Terminal Railway Company—Acquisition Exemption—BNSF Railway Company,* wherein KCT, the owner of KCTL, seeks to acquire by purchase from BNSF Railway Company the 5.5 miles of rail line described above.

Based on projected revenues for the line, KCTL expects to remain a Class III

rail carrier after consummation of the proposed transaction. KCTL certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. Because the projected annual revenues of the line, together with KCTL's projected annual revenue, will exceed $5 million, KCTL certified, on September 21, 2007, that it had served the required notice of the transaction on the national offices of the labor unions for those employees affected on the lines and posted such notice at the workplace of the employees on the affected lines on September 20, 2007.

KCTL states that it intends to consummate the transaction on November 20, 2007. The earliest this transaction may be consummated is November 20, 2007, (the effective date of the exemption (60 days after KCTL certified its compliance with the labor notice requirements of 49 CFR 1150.42(e))).

KCTL also states that, upon authorization of this transaction, it plans to enter into a service agreement with Kaw River Railroad, Inc. (Kaw River), under which Kaw River would provide certain railroad operating services on this 5.5-mile line. KCTL states that Kaw River is not seeking separate authority to operate as a common carrier over the line. In publishing this notice, the Board takes no position on whether Kaw River would need to obtain Board authority to provide services pursuant to this agreement with KCTL. Given the Board's conclusions in *Kansas City Transportation Company LLC—Lease and Assignment of Lease Exemption—Kansas City Terminal Railway Company and Kaw River Railroad, Inc.,* STB Finance Docket No. 34830 (STB served May 23, 2007), and KCTL's recognition of those conclusions in this proceeding, Kaw River should file a notice of exemption to operate pursuant to the agreement and simultaneously file a motion to dismiss if it believes that authority is not needed.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than November 13, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35085, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 30, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–21570 Filed 11–1–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35090]

JP Rail, Inc.—Lease and Operation Exemption—NAT Industries, Inc.

JP Rail, Inc. (JP Rail), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from NAT Industries, Inc. (NAT) and to operate approximately 1 mile of track in Carroll Township, PA, known as the Donora Line (the Line), formerly operated by NAT as private industrial track. JP Rail states that it will hold itself out to provide common carrier rail freight service over the Line, and that it plans to serve customers originating traffic at JP Rail's Pleasantville, NJ facility and also to market its service to ''local'' customers. According to JP Rail, the traffic would comprise construction and demolition materials (C&D), which would be transported from Pleasantville by Norfolk Southern Railway Company to a connection with the Line at milepost ML40 in Carroll Township. JP Rail would then transport the C&D over the Line for subsequent transloading into trucks for movement to ''Westmoreland Waste's landfill,'' approximately 3 miles from Carroll Township. JP Rail states that this operation is intended to be temporary until a permanent rail unloading facility can be constructed on Westmoreland Waste's site and its landfill permit amended to allow for rail traffic. Finally, JP Rail asserts that the proposed transaction is exempt from environmental review under 49 CFR 1105.6(c)(2)(i) and from historic review under 49 CFR 1105.8(b)(1).

JP Rail certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million.

Because of outstanding questions regarding the proposal, the Board, through the Director of the Office of Proceedings, in a decision served October 26, 2007, directed JP Rail to file supplemental information describing in more detail its anticipated operations and supporting its claim that environmental review is not warranted. The Board also directed JP Rail to serve a copy of its verified notice and the October 26 decision on appropriate federal, state, and local entities and stated that the effective date of the exemption would be delayed until December 6, 2007, to allow time for those parties to participate, if they wish. Therefore, the earliest this transaction may be consummated is December 6, 2007, the effective date of the exemption (50 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than November 29, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35090, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. Also, a copy of each pleading must be served on John D. Heffner, 1750 K Street, NW., Suite 350, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 26, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–21566 Filed 11–1–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: The Charter for the Advisory Committee on Tax Exempt and Government Entities (ACT) has been renewed for a two-year period beginning July 13, 2007.

FOR FURTHER INFORMATION CONTACT: Steven J. Pyrek, TE/GE Communications

and Liaison, 202–283–9966 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of the Treasury to announce the renewal of the Advisory Committee on Tax Exempt and Government Entities (ACT). The primary purpose of the ACT is to provide an organized public forum for senior Internal Revenue Service executives and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the ACT reviews existing tax policy and/or makes recommendations with respect to emerging tax administration issues. The ACT suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggests improvements with respect to issues having substantive effect on Federal tax administration. Conveying the public's perception of IRS activities to Internal Revenue Service executives, the ACT comprises individuals who bring substantial, disparate experience and diverse backgrounds. Membership is balanced to include representation from employee plans, exempt organizations, tax-exempt bonds, and Federal, State, local, and Indian tribal governments.

Dated: October 24, 2007.

Steven J. Pyrek,

Director, Communications & Liaison, Tax Exempt and Government Entities.

[FR Doc. E7–21345 Filed 11–1–07; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 72, No. 212
Friday, November 2, 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 HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3285

[Docket No. FR–4928–F–02]

RIN 2502–AI25

Model Manufactured Home Installation Standards

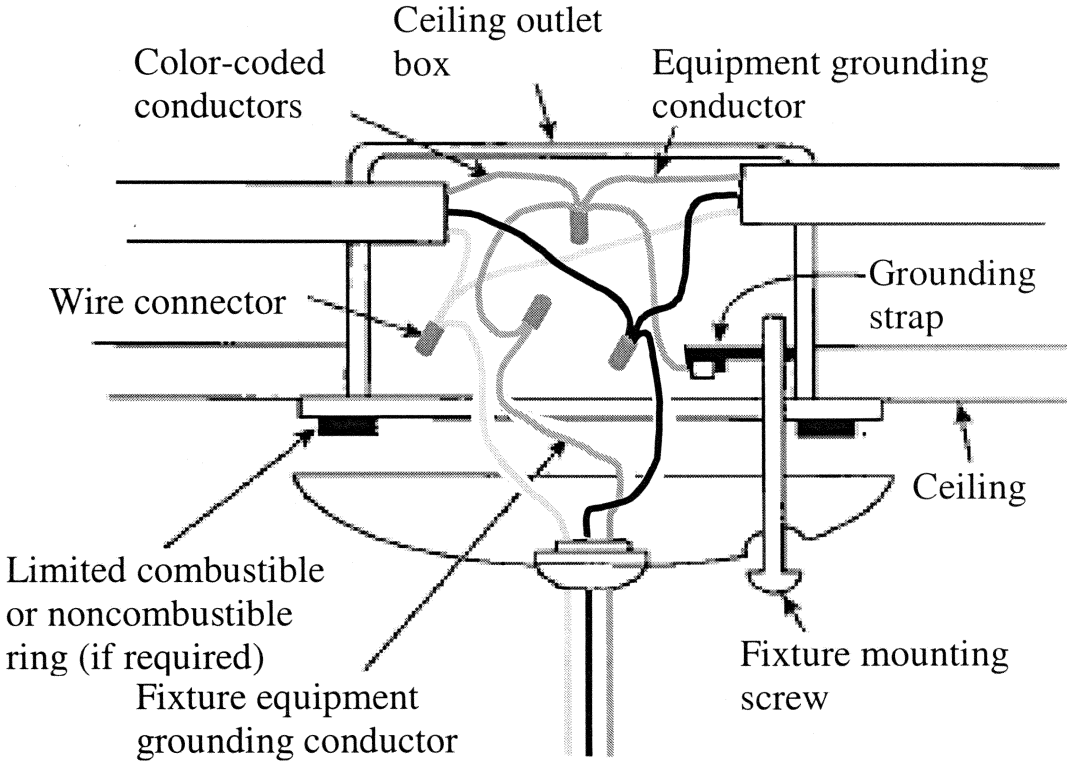
Correction

In rule document 07–5004 beginning on page 59338 in the issue of Friday, October 19, 2007 make the following correction:

§3285.702 [Corrected]

On page 59390, Figure A to §3285.702 is reprinted as shown below:

Figure A to § 3285.702 Typical Installation of Chain-Hung Lighting Fixture.



[FR Doc. C7–5004 Filed 11–1–07; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
November 2, 2007

Part II

Federal Deposit Insurance Corporation

12 CFR Parts 308 and 363
Annual Independent Audits and Reporting Requirements; Proposed Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 363

RIN 3064–AD21

Annual Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 36 of the Federal Deposit Insurance Act (FDI Act) and the FDIC's implementing regulations (part 363) set forth annual independent audit and reporting requirements for insured depository institutions with $500 million or more in total assets. Given changes in the industry, certain sound audit, reporting, and audit committee practices incorporated in the Sarbanes-Oxley Act of 2002 (SOX); and the FDIC's experience in administering part 363, the FDIC is proposing to amend part 363 of its regulations. These amendments are designed to further the objectives of section 36 by incorporating these sound practices into part 363 and to provide clearer and more complete guidance to institutions and independent public accountants concerning compliance with the requirements of section 36 and part 363. As required by section 36, the FDIC has consulted with the other federal banking agencies. The FDIC is also proposing a technical amendment to its rules and procedures (part 308, subpart U) for the removal, suspension, or debarment of accountants and accounting firms.

DATES: Comments must be received on or before January 31, 2008.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Part 363—Independent Audits and Reporting Requirements'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Harrison E. Greene, Jr., Senior Policy Analyst (Bank Accounting), Division of Supervision and Consumer Protection, at *hgreene@fdic.gov* or (202) 898–8905; or Michelle Borzillo, Counsel, Supervision and Legislation Section, Legal Division, at *mborzillo@fdic.gov* or (202) 898–7400.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Section 36 of the Federal Deposit Insurance Act (FDI Act) and the FDIC's implementing regulations (part 363) are generally intended to facilitate early identification of problems in financial management at insured depository institutions with total assets above certain thresholds through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, the establishment of independent audit committees, and related reporting requirements. The asset-size threshold for internal control assessments is $1 billion and the threshold for the other requirements is $500 million. Given changes in the industry, certain sound audit, reporting, and audit committee practices incorporated in the Sarbanes-Oxley Act of 2002 (SOX); and the FDIC's experience in administering part 363, the FDIC is proposing to amend part 363 of its regulations. These amendments are designed to further the objectives of section 36 by incorporating these sound practices into part 363 and to provide clearer and more complete guidance to institutions and independent public accountants concerning compliance with the requirements of section 36 and part 363.

The most significant revisions included in the proposed amendments would: (1) Require management and the independent public accountant to identify the internal control framework used to evaluate internal control over financial reporting and disclose all identified material weaknesses; (2) extend the time period for a non-public institution to file its Part 363 Annual Report by 30 days and replace the 30-day extensions of the filing deadline that may be granted if an institution (public or non-public) is confronted with extraordinary circumstances beyond its reasonable control with a late filing notification requirement that would have general applicability; (3) provide relief from the annual reporting requirements for institutions that are merged out of existence before the filing deadline; (4) provide relief from reporting on internal control over financial reporting for businesses acquired during the fiscal year; (5) require management's assessment of compliance with designated safety and soundness laws and regulations to state management's conclusion regarding compliance and disclose any noncompliance with such laws and regulations; (6) clarify the independence standards with which independent public accountants must comply and enhance the enforceability of compliance with these standards; (7) specify that the duties of the audit committee include the appointment, compensation, and oversight of the independent public accountant; (8) require audit committees to ensure that audit engagement letters do not contain unsafe and unsound limitation of liability provisions and require institutions to file copies of these letters; (9) require certain communications by independent public accountants to audit committees and establish retention requirements for audit working papers; (10) require boards of directors to adopt written criteria for evaluating an audit committee member's independence and provide expanded guidance for boards of directors to use in determining independence; (11) require the total assets of a holding company's insured depository institution subsidiaries to comprise 75 percent or more of the holding company's consolidated total assets in order for an institution to comply with part 363 at the holding company level; and (12) provide illustrative management reports to assist institutions in complying with the annual reporting requirements.

The FDIC is also proposing to amend its rules and procedures (part 308, subpart U) for the removal, suspension, or debarment of accountants and accounting firms from performing audit services required by section 36 of the FDI Act by specifying where an accountant or accounting firm should file required notices of orders and actions with the FDIC.

II. Background

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added section 36, ''Early Identification of Needed

Improvements in Financial Management,'' to the FDI Act (12 U.S.C. 1831m). Section 36 is generally intended to facilitate early identification of problems in financial management at insured depository institutions above a certain asset size threshold (covered institutions) through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and related reporting requirements. Section 36 also includes requirements for audit committees at these insured depository institutions. Section 36 grants the FDIC discretion to set the asset size threshold for compliance with these statutory requirements, but it states that the threshold cannot be less than $150 million. Sections 36(d) and (f) also obligate the FDIC to consult with the other federal banking agencies in implementing these sections of the FDI Act, and the FDIC has performed the required consultation.

Part 363 of the FDIC's regulations (12 CFR part 363) implements section 36 of the FDI Act. When it adopted part 363 in 1993, the FDIC stated that it was setting the asset size threshold at $500 million rather than the $150 million specified in section 36 to mitigate the financial burden of compliance with section 36 consistent with safety and soundness. In selecting $500 million in total assets as the size threshold, the FDIC noted that approximately 1,000 of the then nearly 14,000 FDIC-insured institutions would be subject to part 363. These covered institutions held approximately 75 percent of the assets of insured institutions at that time. By imposing the audit, reporting, and audit committee requirements of part 363 on institutions with this percentage of the industry's assets, the FDIC intended to ensure that the Congress's objectives for achieving sound financial management at insured institutions when it enacted section 36 would be focused on those institutions posing the greatest potential risk to the insurance funds then administered by the FDIC. Today, due to consolidation in the banking and thrift industry and the effects of inflation, approximately 1,300 of the more than 8,600 insured institutions have $500 million or more in total assets and are therefore subject to part 363. These covered institutions hold approximately 91 percent of the assets of insured institutions.

Until its most recent amendments, part 363 required each covered institution to submit to the FDIC and other appropriate federal and state supervisory agencies an annual report comprised of audited financial statements, a statement of management's responsibilities, assessments by management of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and an independent public accountant's attestation report on internal control over financial reporting. In addition, part 363 provided that each covered institution must establish an independent audit committee of its board of directors comprised of outside directors who are independent of management of the institution. Part 363 also includes Guidelines and Interpretations (Appendix A to part 363), which are intended to assist institutions and independent public accountants in understanding and complying with section 36 and part 363.

In November 2005, the FDIC amended its part 363 annual audit and reporting requirements and audit committee requirements. The amendments raised the asset-size threshold from $500 million to $1 billion for the assessments of internal control over financial reporting by management and the independent public accountant. All of the other audit and reporting requirements of part 363 continued to apply to all institutions with $500 million or more in total assets. Also, for covered institutions with between $500 million and $1 billion in total assets, the amendments required only a majority, rather than all, of the members of the audit committee, who must be outside directors, to be independent of management.

III. Discussion and Section-by-Section Analysis of Proposed Amendments

When it amended part 363 in November 2005, the FDIC noted that it had identified other aspects of part 363 that may warrant revision in light of changes in the industry and the passage of SOX.

Given the number of proposed changes to part 363 and its Guidelines and Interpretations and to enable readers and commenters to more easily understand the context of these proposed changes, this notice includes the entire text of part 363 as it is proposed to be amended, not just the text of proposed amendments. Also, the following ''Table of Proposed Changes to Part 363 and Appendices'' is intended to assist readers and commenters in determining which sections of part 363 would be affected by this proposal.

TABLE OF PROPOSED CHANGES TO PART 363 AND APPENDICES

	Unchanged	Revised	New	Reserved
Part 363—Annual Independent Audits and Reporting Requirements				
Table of Contents		X		
OMB Control Number				
§ 363.0	X			
Scope				
§ 363.1(a)		X		
§ 363.1(b)(1)		X		
§ 363.1(b)(2)		X		
§ 363.1(b)(3)	X			
§ 363.1(c)			X	
§ 363.1(d)			X	
Annual Reporting Requirements				
§ 363.2(a)		X		
§ 363.2(b)		X		
§ 363.2(b)(1)		X		

TABLE OF PROPOSED CHANGES TO PART 363 AND APPENDICES—Continued

	Unchanged	Revised	New	Reserved
§ 363.2(b)(2)		X		
§ 363.2(b)(3)		X		
§ 363.2(c)			X	
Independent Public Accountant				
§ 363.3(a)	X			
§ 363.3(b)		X		
§ 363.3(c)	X			
§ 363.3(d)			X	
§ 363.3(e)			X	
§ 363.3(f)			X	
§ 363.3(g)			X	
Filing and Notice Requirements				
§ 363.4(a)		X		
§ 363.4(b)	X			
§ 363.4(c)		X		
§ 363.4(d)	X			
§ 363.4(e)			X	
§ 363.4(f)			X	
Audit Committees				
§ 363.5(a)		X		
§ 363.5(b)	X			
§ 363.5(c)			X	
Appendix A to Part 363—Guidelines and Interpretations				
Table of Contents		X		
Introduction	X			
Scope (§ 363.1)				
Guideline 1	X			
Guideline 2	X			
Guideline 3		X		
Guideline 4		X		
Guideline 4A			X	
Annual Reporting Requirements (§ 363.2)				
Guideline 5		X		
Guideline 5A			X	
Guideline 6		X		
Guideline 7	X			
Guideline 8	X			
Guideline 8A			X	
Guideline 8B			X	
Guideline 9		X		
Guideline 10		X		
Guideline 11	X			
Guideline 12	X			
Role of Independent Public Accountant (§ 363.3)				
Guideline 13		X		
Guideline 14				X
Guideline 15		X		
Guideline 16				X
Guideline 17	X			
Guideline 18		X		
Guideline 19	X			
Guideline 20		X		
Guideline 21	X			
Filing and Notice Requirements (§ 363.4)				
Guideline 22				X
Guideline 23		X		
Guideline 24	X			

TABLE OF PROPOSED CHANGES TO PART 363 AND APPENDICES—Continued

	Unchanged	Revised	New	Reserved
Guideline 25				X
Guideline 26		X		
Audit Committees (§ 363.5)				
Guideline 27		X		
Guideline 28		X		
Guideline 29				X
Guideline 30		X		
Guideline 31		X		
Guideline 32	X			
Guideline 33	X			
Guideline 34	X			
Guideline 35		X		
Other				
Guideline 36	X			
Table 1 to Appendix A—Designated Federal Laws and Regulations		X		
Appendix B—Illustrative Management Reports			X	

A. Scope (§ 363.1 and Guidelines 1–4A)

1. Applicability

The FDIC is proposing to amend § 363.1(a) to more clearly state that part 363 applies to any insured depository institution that has consolidated total assets of $500 million or more at the beginning of its fiscal year. For example, if an institution has a December 31 fiscal year end and its consolidated total assets were $600 million as January 1, 2007, the institution would be subject to the annual reporting requirements of part 363 and would have to file a Part 363 Annual Report for the fiscal year ending December 31, 2007. Also, the institution would become subject to the other reporting requirements as well as the audit committee requirements of part 363 on January 1, 2007.

2. Compliance by Subsidiaries of Holding Companies

At present, an insured depository institution that is a subsidiary of a holding company may use consolidated holding company financial statements to satisfy the audited financial statements requirement of part 363 regardless of whether the assets of the insured depository institution subsidiary or subsidiaries of the holding company represent substantially all or only a minor portion of the holding company's consolidated total assets. When the assets of insured depository institution subsidiaries do not comprise a substantial portion of a holding company's consolidated total assets, the FDIC staff has found that the holding company's consolidated financial statements, including the accompanying notes to the financial statements, do not tend to provide sufficient information that is indicative of the financial position and results of operations of these institutions. Also, when the insured depository institution subsidiaries do not contribute significantly to the holding company's financial position and results of operations, the extent of audit coverage given to these institutions in the audit of the consolidated holding company may be limited. Such limited audit coverage would not be consistent with the purpose and intent of section 36 of the FDI Act, which focuses on insured depository institutions rather than holding companies. In this situation, the assurance that would be provided by an independent audit performed substantially at the level of the insured depository institution subsidiaries is not otherwise available.

Therefore, given the differing characteristics of the holding companies that own insured depository institutions as well as the relationship of an insured depository institution's total assets to the consolidated total assets of its parent holding company, and in keeping with the intent and purpose of section 36 of the FDI Act, the FDIC is proposing to amend §§ 363.1(b)(1) and (2) by revising the criteria for determining whether the audited financial statements requirement and the other requirements of part 363 may be satisfied at a holding company level. More specifically, to comply with the requirements of part 363 at the top-tier or any other mid-tier holding company level, the consolidated total assets of the insured depository institution (or the consolidated total assets of all insured depository institutions, regardless of size, if the top-tier or mid-tier holding company owns or controls more than one insured depository institution) would have to comprise 75 percent or more of the consolidated total assets of the top-tier or mid-tier holding company. The FDIC believes that this percentage-of-assets threshold should ensure that the extent of independent audit work performed at the insured depository institution level is sufficient to satisfy the intent of section 36 of the FDI Act, that is, the early identification of needed improvements in financial management at insured institutions. At the same time, this threshold would continue to provide flexibility to the vast majority of covered institutions that are part of a holding company structure with respect to the level at which they may comply with part 363.

When determining an appropriate percentage-of-assets threshold for compliance with part 363 at a holding company level, the FDIC considered the range of percentage-of-assets ratios for insured institutions that are part of a holding company structure. The vast majority of insured institutions subject to part 363 that are in a holding company structure are subsidiaries of organizations where the assets of the insured depository institution subsidiaries of the holding company comprise 90 percent or more of the holding company's consolidated total assets. Of the remaining institutions subject to part 363 that are in a holding company structure, most are subsidiaries of organizations where the assets of the insured institutions comprise either between 75 and 90 percent or less than 25 percent of the top-tier parent company's consolidated total assets. Smaller numbers of

institutions are subsidiaries of organizations where the assets of the insured institutions comprise from 25 to 50 percent or from 50 to 75 percent of the top-tier parent company's consolidated total assets. However, in a number of cases where the insured institution subsidiaries comprise less than 75 percent of the top-tier holding company's consolidated total assets, the insured institution subsidiaries that are subject to part 363 currently comply with the regulation at a mid-tier holding company level where the assets of the insured institution subsidiaries comprise 90 percent or more of the mid-tier holding company's consolidated total assets. Thus, these institutions would not need to change how they comply with part 363 in response to the establishment of the proposed 75 percent threshold, provided they continue to comply at the same mid-tier holding company level and this holding company continues to meet the 75 percent threshold.

The FDIC recognizes that those institutions currently complying with part 363 at the holding company level that will not meet the proposed 75 percent of consolidated total assets threshold will incur additional costs from having to comply with the regulation at the institution level or at a suitable mid-tier holding company level. Nevertheless, the FDIC believes that the introduction of this percentage-of-assets threshold strikes an appropriate balance between insured institution financial data and audit coverage and the cost of compliance with part 363.

As a related matter, guideline 3 to part 363, *Compliance by Holding Company Subsidiaries*, states that when a holding company submits audited consolidated financial statements and other reports or notices required by part 363 on behalf of any subsidiary institution, an accompanying cover letter should identify all subsidiary institutions to which the statements, reports, or other notices pertain. Because many cover letters received by the FDIC have not sufficiently identified these subsidiary institutions, the FDIC is proposing to amend guideline 3 to clarify what information should be included in the cover letter. For example, for a Part 363 Annual Report, the cover letter should identify the subsidiary institutions subject to part 363 included in the holding company's consolidated financial statements and state whether the other annual report requirements are being satisfied for these institutions at the holding company level or at the institution level.

3. Financial Reporting

The FDIC is proposing to add a new § 363.1(c) and a new guideline 4A, *Financial Reporting,* to specify that ''financial reporting'' includes both financial statements prepared in accordance with generally accepted accounting principles and those prepared for regulatory reporting purposes. Also, as proposed, guideline 4A would clarify that financial statements prepared for regulatory reporting purposes consist of the schedules equivalent to the basic financial statements that are included in an institution's appropriate regulatory report and that financial statements prepared for regulatory reporting purposes do not include regulatory reports prepared by a non-bank subsidiary of a holding company or an institution. For example, if a bank holding company or an insured depository institution owns an insurance subsidiary, financial statements prepared for regulatory reporting purposes would not include any regulatory reports that the insurance subsidiary is required to submit to its appropriate insurance regulatory agency. These proposed amendments are consistent with explanatory guidance issued by the FDIC on this subject in December 1994 after reviewing the Part 363 Annual Reports submitted earlier that year, which was the first time these annual reports were required to be filed with the FDIC.[1]

4. Definitions

The FDIC is proposing to add § 363.1(d), *Definitions,* to define several common terms used in part 363 and the guidelines.

B. Annual Reporting Requirements (§ 363.2 and Guidelines 5–12)

1. Audited Financial Statements

Consistent with sound management practices and the objective of internal control over financial reporting, the FDIC is proposing to amend § 363.2(a) to require that the annual financial statements reflect all material correcting adjustments identified by the independent public accountant. Financial statements issued by insured depository institutions that are public companies or by their parent holding companies that are public companies are already subject to such a requirement pursuant to section 401 of SOX. The FDIC believes this requirement should also apply to institutions subject to part 363 that are not public companies.

2. Management Report Contents

Based on its review of management reports filed pursuant to part 363, the FDIC has noted differences in the content of these reports and insufficient information regarding the results of the assessments that management must perform. When management has identified material weaknesses in internal control over financial reporting or noncompliance with designated safety and soundness laws and regulations, these weaknesses and noncompliance have not always been disclosed.

In addition, management's assessment of internal control over financial reporting has often failed to disclose the internal control framework used to perform the assessment of the effectiveness of these controls. It is not always evident from management's report whether controls over the preparation of the regulatory financial statements have been included within the scope of management's assessment. The omission of this information from an institution's management report reduces the usefulness of the report as a means of identifying needed improvements in financial management, which is the objective of section 36 of the FDI Act. The FDIC notes that the regulations adopted by the Securities and Exchange Commission (SEC) in 2003 implementing the requirement in section 404 of SOX for a management report on internal control over financial reporting requires the identification of the internal control framework management used to evaluate the effectiveness of these controls and the disclosure of any identified material weakness.

Accordingly, to provide clearer guidance on what should be included in the management report, the FDIC is proposing to expand § 363.2(b). As proposed, § 363.2(b) would require management's assessment of compliance with the designated safety and soundness laws and regulations to include a clear statement as to management's conclusion regarding compliance and disclose any noncompliance with such laws and regulations. In addition, amended § 363.2(b) would require management's assessment of internal control over financial reporting to identify the internal control framework that management used to make its evaluation, include a statement that the evaluation included controls over the preparation of regulatory financial statements, include a clear statement as

[1] See FDIC Financial Institution Letter (FIL) 86–94, dated December 23, 1994.

to management's conclusion regarding the effectiveness of internal control over financial reporting, disclose all material weaknesses identified by management, and preclude management from concluding that internal control over financial reporting is effective if there are any material weaknesses.

Because part 363 and its guidelines provide only limited guidance concerning the contents of the management report and the related signature requirements for this report, institutions and auditors have expressed interest in examples of acceptable reports. Therefore, to assist management of insured depository institutions in complying with the annual reporting requirements of § 363.2, the FDIC is proposing to add ''Appendix B to Part 363—Illustrative Management Reports.'' Proposed Appendix B would provide guidance regarding reporting scenarios that satisfy the annual reporting requirements of part 363, illustrative management reports, and an illustrative cover letter for use when an institution complies with the annual reporting requirements at the holding company level. The use of the wording in the illustrative management reports and cover letter would not be required.

Regarding management's responsibility for assessing compliance with the designated safety and soundness laws and regulations, the FDIC is proposing to revise and update Table 1 to Appendix A of part 363 to reflect changes in these safety and soundness laws and regulations that have occurred since this table was last revised in 1997.

3. Management Report Signatures

Section 36(b)(2) of the FDI Act requires an institution's management report to be signed by the chief executive officer and the chief accounting officer or chief financial officer. In its reviews of management reports, the FDIC has encountered inconsistencies between the level at which the management report components are being satisfied (insured depository institution level versus holding company level) and the corporate level of the officers who are signing the management report. More specifically, management reports are often not signed by the officers at the appropriate corporate level when the audited financial statements requirement is satisfied at the holding company level or when one or more of the components of the management report is satisfied at the holding company level and the remaining components of the management report are satisfied at the insured depository institution level. As a result, the FDIC believes institutions would benefit from clearer guidance regarding who must sign the management report. Therefore, the FDIC is proposing to add § 363.2(c) to specify which corporate officers must sign the management report and also the level of the corporate signers (i.e., insured depository institution level or the holding company level).

4. Institutions Merged Out of Existence

Currently, part 363 does not exempt an institution that is merged out of existence after the end of its fiscal year but before the deadline for filing its Part 363 Annual Report from filing an annual report. Such institutions typically submit a written request for relief from the annual report filing requirement and the request is approved by the FDIC. To reduce regulatory burden and provide certainty for merging institutions, the FDIC is proposing to add guideline 5A, *Institutions Merged Out of Existence,* to explicitly provide relief from filing a Part 363 Annual Report to an institution that is merged out of existence after the end of its fiscal year, but before the deadline for filing its Part 363 Annual Report. However, a covered institution that is acquired after the end of its fiscal year, but retains its separate corporate existence rather than being merged out of existence, would continue to be required to file a part 363 Annual Report for that fiscal year.

5. Management's Assessment of the Effectiveness of Internal Control Over Financial Reporting

The FDIC has publicly advised institutions with $1 billion or more in total assets that are public companies or subsidiaries of public companies that they have considerable flexibility in determining how best to satisfy the SEC's requirements for management's assessment of internal control over financial reporting which implement section 404 of SOX, and the FDIC's requirements in part 363.[2] The reporting flexibility available to institutions subject to both the section 404 and the part 363 requirements was initially described in the preamble to the SEC's section 404 final rule release (68 FR 36642, June 18, 2003). This final rule release explained that the flexible reporting approach described in the preamble had been developed by the SEC staff in consultation with the staff of the federal banking agencies. To codify this reporting flexibility in part 363, the FDIC is proposing to add guideline 8A, *Management's Assessment of the Effectiveness of Internal Control Over Financial Reporting.* For an institution with $1 billion or more in total assets that is subject to both part 363 and the SEC's rules implementing section 404 of SOX (or whose parent holding company is subject to section 404 provided the condition in § 363.1(b)(2) is met), the proposed guideline describes two options for complying with the filing requirements regarding management's report on internal control over financial reporting. These options are to prepare (1) a separate report to satisfy the FDIC's part 363 requirements and prepare a separate report to satisfy the SEC's section 404 requirements, or (2) a single report that satisfies all of the FDIC's part 363 requirements and all of the SEC's section 404 requirements.

6. Internal Control Reports for Acquired Businesses

Currently, under the reporting requirements of part 363, both management's and the related independent public accountant's evaluation of an institution's internal control over financial reporting must include controls at an institution in its entirety, including all of its consolidated businesses, including businesses that were recently acquired. However, the FDIC recognizes that it may not always be possible for management to conduct an evaluation of the internal control over financial reporting of an acquired business in the period between the consummation date of the acquisition and the due date of management's internal control evaluation. For public companies subject to the internal control reporting requirements of section 404 of SOX, the SEC staff has also acknowledged that conducting an internal control evaluation of such an acquired business may not always be possible. This led the SEC staff to provide guidance to public companies stating that the staff would not object to the exclusion of the acquired business from management's evaluation of internal control over financial reporting, provided certain disclosures are made and other conditions are met.[3] The FDIC has received several written requests from institutions subject to the internal control reporting requirements of part 363 concerning their ability to exclude

[2] 70 FR 71231, November 28, 2005; 70 FR 44295, August 2, 2005; FDIC Financial Institution Letter (FIL) 137–2004, December 21, 2004.

[3] See Question 3 in the SEC staff's *Frequently Asked Questions on Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports* at *http://www.sec.gov/info/accountants/controlfaq1004.htm.*

recently acquired businesses from the scope of management's internal control evaluation as of the end of the year of the acquisition. The FDIC staff has granted such requests for relief subject to the same disclosure parameters and other conditions that are laid out in the SEC staff's guidance on this matter.

To reduce regulatory burden, including the burden of submitting written requests to the FDIC, and provide certainty to institutions, the FDIC is proposing to add guideline 8B, *Internal Control Reports for Acquired Businesses,* to explicitly provide relief from the reporting requirements regarding internal control over financial reporting related to business acquisitions made by an institution during its fiscal year. As proposed and consistent with the SEC staff's guidance, guideline 8B would permit management's evaluation of internal control over financial reporting to exclude internal control over financial reporting for the acquired business, provided management's report identifies the acquired business, states that the acquired business is excluded from management's evaluation of internal control over financial reporting, and indicates the significance of the acquired business to the institution's consolidated financial statements. Also, proposed guideline 8B would clarify that if the acquired business is an insured depository institution that is subject to part 363 and it is not merged out of existence before the deadline for filing its Part 363 Annual Report, the acquired business (institution) must continue to comply with all of the applicable requirements of part 363.

7. Standards for Internal Control

At present, guideline 10, *Standards for Internal Control*, provides that each institution should determine its own standards for establishing, maintaining, and assessing the effectiveness of its internal control over financial reporting. However, the guideline does not describe the characteristics of a suitable internal control framework. Accordingly, the FDIC is proposing to amend guideline 10 to provide guidance regarding the attributes of a suitable internal control framework to be used by management in its evaluation of an institution's internal control over financial reporting. Recognizing that a significant percentage of institutions subject to part 363 or their parent holding companies are also subject to the internal control reporting requirements of section 404 of SOX, the attributes described in amended guideline 10 are consistent with the attributes the SEC described in the preamble to the SEC's section 404 final rule release (68 FR 36648, June 18, 2003). The FDIC believes that a framework with these attributes is appropriate for all institutions whether or not they are public companies.

C. Independent Public Accountant (§ 363.3 and Guidelines 13–21)

1. Internal Control Over Financial Reporting

As with its experience in reviewing the portion of the management report in which management provides its assessment of the effectiveness of the institution's internal control over financial reporting, the FDIC has found some independent public accountants' internal control attestation reports to be less than sufficiently informative. Such attestation reports are, therefore, inconsistent with the objectives of section 36 of the FDI Act. As a consequence, the FDIC is proposing to amend § 363.3(b), which governs the independent public accountant's report on internal control over financial reporting, to specify that, consistent with generally accepted standards for attestation engagements, the Public Company Accounting Oversight Board's (PCAOB) auditing standards, and related PCAOB staff implementation guidance, the accountant's report must:

- Not be dated prior to the date of management's report on its assessment of the effectiveness of internal control over financial reporting;
- Identify the internal control framework that the accountant used to make the evaluation (which must be the same as the internal control framework used by management);
- Include a statement that the accountant's evaluation included controls over the preparation of regulatory financial statements;
- Include a clear statement as to the accountant's conclusion regarding the effectiveness of internal control over financial reporting;
- Disclose all material weaknesses identified by the accountant; and
- Conclude that internal control is ineffective if there are any material weaknesses.

The FDIC is also proposing to amend guideline 18, *Attestation Report*, to be consistent with § 363.3(b)(2) by reiterating that the attestation report on internal control over financial reporting should include a statement as to regulatory reporting.

2. Communications With Audit Committee

According to section 204 of SOX, an accountant who audits a public company's financial statements should report on a timely basis to the company's audit committee: (1) All critical accounting policies, (2) alternative accounting treatments discussed with management, and (3) written communications provided to management, such as a management letter or schedule of unadjusted differences. These reporting requirements are intended to strengthen the relationship between the audit committee and the accountant. The FDIC has previously stated that effective communication between the accountant who audits the institution's financial statements and the institution's audit committee assists the audit committee in carrying out its responsibilities. For this reason, the FDIC encouraged institutions, regardless of whether they are public companies or not, to arrange with their accountant to institute these reporting practices.[4] Requirements that are similar, but not identical, to those set forth in section 204 apply to accountants who audit the financial statements of entities that are not public.[5] Therefore, consistent with current best practices and standards for audits of both public and non-public entities, the FDIC is proposing to amend part 363 by adding § 363.3(d), *Communications with audit committee*, to set a uniform minimum requirement for such communication. As proposed, § 363.3(d) would require the independent public accountant to report the information identified in section 204 of SOX to the audit committee.

3. Retention of Working Papers

Section 36(g)(3)(A) of the FDI Act states that an independent public accountant who performs audit services required by section 36 must agree to provide related working papers to the FDIC, any appropriate federal banking agency, and any state bank supervisor. However, when seeking to review audit working papers, the FDIC has previously encountered situations where the working papers had been retained for only a limited number of years. The SEC's rules and the PCAOB's auditing standards implementing sections 802 and 103 of SOX, respectively, now specify a 7-year retention period for audit working papers. The American Institute of Certified Public Accountants' (AICPA) auditing standards provide that the retention period for audit working

[4] See FDIC Financial Institution Letter (FIL) 17–2003, dated March 5, 2003.

[5] See Statement on Auditing Standards No. 114, *The Auditor's Communication With Those Charged With Governance*, December 2006.

papers should not be shorter than five years.[6] Since the retention period applicable to audits of public companies is seven years, the FDIC believes that a uniform retention period should apply to audits of all institutions subject to part 363. Accordingly, consistent with the current practices and professional standards for audits of both public and non-public entities, the FDIC is proposing to amend part 363 by adding § 363.3(e), *Retention of working papers.* As proposed, § 363.3(e) would require the independent public accountant to retain the working papers related to its audit of the financial statements and, if applicable, its evaluation of internal control over financial reporting for seven years.

4. Independence

Section 36 of the FDI Act states that an ''independent public accountant'' must perform the audit and attestation services required by section 36 but it does not define ''independent,'' leaving this to the FDIC's rulemaking authority. As adopted by the FDIC in 1993, part 363 includes guideline 14, *Independence,* which identifies the independence standards applicable to accountants performing services under section 36 and part 363. In 2003, the agencies jointly issued rules of practice to implement the enforcement provisions of section 36(g)(4), which authorize the FDIC or an appropriate federal banking agency to remove, suspend, or bar an accountant, for good cause, from performing audit and attestation services for institutions subject to section 36 and part 363.[7] To enhance the enforceability of the independence standards with which an accountant must comply for purposes of part 363, the FDIC is proposing to move the independence requirements for independent public accountants from guideline 14, *Independence*, to new § 363.3(f), *Independence*. As proposed, § 363.3(f) would also clarify that the independent public accountant must comply with the independence standards and interpretations of the PCAOB that have been approved by the SEC in addition to the independence standards and interpretations of the AICPA and the SEC.

5. Peer Reviews

Section 36(g)(3)(A)(ii) of the FDI Act requires an independent public accountant to have received a peer review or be enrolled in a peer review program that meets acceptable guidelines. At present, guideline 15 to part 363 provides that to be acceptable, a peer review should, among other things, be generally consistent with AICPA standards. Since part 363 was originally adopted, the PCAOB has been created and conducts inspections of registered public accounting firms, some of which audit insured depository institutions subject to part 363 or their parent holding companies. These inspections serve a similar purpose as peer reviews. In addition, the PCAOB issues reports on its inspections of these accounting firms.

In response to this development and in light of the agencies' issuance of rules of practice implementing the enforcement provisions of section 36, as mentioned above, the FDIC is proposing to add new § 363.3(g) on peer reviews. The FDIC would move the requirements for peer reviews and retention of the peer review working papers from guideline 15, *Peer Reviews*, to § 363.3(g). In addition, the requirements for filing peer review reports would be moved to new § 363.3(g) from guideline 16, *Filing Peer Review Reports*. As proposed, § 363.3(g) would also clarify that acceptable peer reviews include peer reviews performed in accordance with the AICPA's Peer Review Standards and inspections conducted by the PCAOB. It would also provide that the FDIC would not make available for public inspection the portion of any peer review report and inspection report determined to be nonpublic by the AICPA and the PCAOB, respectively. Finally, the FDIC is proposing to revise guideline 15 to explain that a peer review, other than a PCAOB inspection, should be generally consistent with AICPA Peer Review Standards.

6. Notice of Termination

Guideline 26, *Notices Concerning Accountants*, permits an institution that is a public company or a subsidiary of a public company to satisfy the requirement for filing a notice of termination of its independent public accountant by using its current report (*e.g.*, SEC Form 8–K) concerning a change in accountant to satisfy the similar notice requirements of part 363. To reduce regulatory burden and provide flexibility to the independent public accountant of such an institution, the FDIC is proposing to amend guideline 20, *Notice of Termination*, to permit the independent public accountant to satisfy the requirement to file a notice of termination of its services in a similar manner. As proposed, the independent public accountant generally could satisfy the part 363 notice requirement by (1) submitting the letter it provided to management to be filed with the institution's or the holding company's current report filed with the SEC or the appropriate federal banking agency or (2) relying on the institution's or the holding company's current report filed by management with the FDIC that includes the independent public accountant's notice of termination of its services, provided the independent public accountant confirms that management has filed a current report that includes the accountant's letter to satisfy the requirements of § 363.3(c).

D. Filing and Notice Requirements (§ 363.4 and Guidelines 22–26)

1. Annual Reporting

Currently, the annual reporting requirements of part 363 require each insured depository institution to file its Part 363 Annual Report within 90 days after the end of its fiscal year. Part 363 also requires each institution to file the independent public accountant's report on the audited financial statements and, if applicable, the accountant's attestation report on management's assessment of internal control over financial reporting, both of which are components of the Part 363 Annual Report, within 15 days of receipt by the institution, which can present a conflict with the annual report filing requirement. The FDIC is also aware of the impact that earlier filing deadlines established by the SEC for annual reports filed by certain public companies under the federal securities laws (*e.g.*, SEC Form 10–K) and more robust auditing standards related to internal control over financial reporting have had on the management of institutions, on the resources of independent public accountants, and on auditing costs. To reduce cost and burden, the FDIC is proposing to amend § 363.4(a) by extending the time period within which an insured depository institution that is not a public company or a subsidiary of a public company must file its Part 363 Annual Report from within 90 days to within 120 days after the end of its fiscal year. An insured depository institution that is a public company, or that is a subsidiary of a public company that meets certain criteria, would continue to be required to file its Part 363 Annual Report within 90 days after the end of its fiscal year, which is consistent with the maximum time frame that public companies have for filing annual reports under the federal securities laws. The FDIC would also eliminate the ambiguity in § 363.4 concerning the filing deadline for the components of the Part 363 Annual

[6] See Statement on Auditing Standards No. 103, *Audit Documentation*, December 2006.

[7] 68 FR 48256, August 13, 2003.

Report that are prepared by the independent public accountant.

An insured depository institution with consolidated total assets of less than $1 billion that is a public company or a subsidiary of a public company is required to file management's assessment of the effectiveness of internal control over financial reporting with the SEC or the appropriate federal banking agency in accordance with the compliance dates of the SEC's rules implementing section 404 of SOX. Management's findings and conclusions with respect to internal control over financial reporting, as disclosed in the assessment that management files with the SEC or the appropriate federal banking agency, provide information that would aid in meeting the objective of section 36 of the FDI Act.

Therefore, the FDIC is proposing to add a provision to § 363.4(a) that would require an institution of this size to submit a copy of management's section 404 internal control assessment with its Part 363 Annual Report, but this assessment will not be considered part of the institution's Part 363 Annual Report.

2. Independent Public Accountant's Reports

Section 36(h)(2)(A) of the FDI Act and § 363.4(c) require an institution to file a copy of any management letter or other report issued by its independent public accountant that pertains to the financial statement audit and the attestation on internal control over financial reporting within 15 days after receipt by the institution. The FDIC's experience in administering part 363 indicates that institutions are often uncertain as to which types of reports they receive from their independent public accountant must be submitted to the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor pursuant to this filing requirement. As stated above, this uncertainty extends to this 15-day filing requirement and its relationship to the filing deadline for the Part 363 Annual Report. To clarify the requirements for the filing of accountants' reports, the FDIC is proposing to amend § 363.4(c), *Independent public accountant's letters and reports*, by providing examples of the types of reports issued by an institution's independent public accountant, except for the accountant's reports that are required to be included in the institution's Part 363 Annual Report, that are to be filed within 15 days after receipt. Guideline 25, *Independent Accountant's Reports*, would be deleted because it would be redundant and no longer needed.

In *the Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters*, the federal banking agencies expressed their concerns about limitation of liability provisions included in external audit engagement letters and advised institutions against entering into engagement letters containing such provisions.[8] To enable the FDIC to timely review institutions' engagement letters with their independent public accountants, the FDIC is also proposing to amend § 363.4(c) to require institutions to file copies of audit engagement letters, including any related agreements and amendments, with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor within 15 days of acceptance by the institution.

3. Notification of Late Filing

Guideline 23, *Relief from Filing Deadlines*, currently provides that in the occasional event that an institution is confronted with extraordinary circumstances beyond its reasonable control that justifies an extension of the deadline for filing its Part 363 Annual Report or another required report or notice, the institution may submit a written request for an extension of the filing deadline of not more than 30 days that explains the reasons for the request. Such a request may be granted for good cause. Over the last several years, the reasons set forth in the requests for extensions of time for filing Part 363 Annual Reports that have been submitted to the FDIC generally did not represent extraordinary circumstances beyond the institution's reasonable control, the standard currently set forth in guideline 23. Also, several extension requests were repeats of requests from the same institutions from the previous year.

Based upon this experience and given the proposed amendment to § 363.4(a) to extend the filing deadline for Part 363 Annual Reports for non-public institutions from 90 to 120 days, the FDIC is proposing to replace the extensions of time for filing reports that are available only in extraordinary circumstances under guideline 23 with a new § 363.4(e),

Notification of late filing. In place of filing extensions that have limited applicability, this new section would be applicable to all institutions and would require an institution that is unable to timely file all or any portion of its Part 363 Annual Report or any other report or notice to submit a written notice of late filing before the filing deadline for the report or notice. The late filing notice shall disclose the institution's inability to timely file all or specified portions of its Part 363 Annual Report or other report or notice, the reasons therefore in reasonable detail, and the date when the report or notice will be filed.

The FDIC is also proposing to amend guideline 23 by changing its focus from extension requests to late filing notices consistent with the approach taken in new § 363.4(e). Amended guideline 23 would explain that submitting a late filing notice would not cure the apparent violation of part 363 arising from an institution's failure to timely file a Part 363 Annual Report or any other required report or notice. The supervisory response to such an apparent violation would take into account the facts and circumstances surrounding an institution's delay in filing. As proposed, guideline 23 would also provide that, if the late filing applies to only a portion of the Part 363 Annual Report or any other report or notice, the components of the report or notice that have been completed should be filed within the prescribed filing period accompanied by either a cover letter that indicates which components are omitted or a combined late filing notice and cover letter.

4. Place for Filing

Current guideline 22 identifies the office of the FDIC, the appropriate federal banking agency, and the appropriate state bank supervisor to which reports and notices (other than peer review reports) required by part 363 are to be filed. Nevertheless, the FDIC has found that some institutions submit required reports and notices to incorrect locations. The FDIC staff also receives questions from institutions asking where reports and notices should be filed. To make the information as to where Part 363 Annual Reports, written notices of late filing, and other reports and notices (except peer review reports) are to be filed more prominent, the FDIC is proposing to move this information from guideline 22, *Place for Filing*, to a new § 363.4(f), *Place for filing.*

E. Audit Committees (§ 363.5 and Guidelines 27–35)

1. Composition

Section 36(g)(1) of the FDI Act and § 363.5(a) require each insured depository institution subject to part 363 to have an independent audit committee comprised entirely of outside directors. As defined in § 363.5(a)(3), in general, an outside director is a director

[8] 71 FR 6847, February 9, 2006.

who is not an officer or employee of the institution or any affiliate of the institution. In addition, the outside directors who serve on the audit committee must be ''independent of management,'' although a minority of the audit committee members of institutions with $500 million or more but less than $1 billion in total assets need not be ''independent of management.'' According to guideline 27, *Composition*, each institution's board of directors is responsible for determining at least annually whether existing and potential audit committee members satisfy the requirements governing audit committee composition. Guidelines 28 and 29 set forth certain factors for boards of directors to consider in determining whether an outside director is ''independent of management.''

In order for a board of directors to perform its evaluation of audit committee members in a consistent, effective, and reviewable manner, the FDIC believes the board should be guided by an approved policy or set of criteria that identifies the factors to be taken into account by the board. Accordingly, the FDIC is proposing to amend guideline 27 to state that an institution's board of directors should maintain and use an approved set of written criteria for evaluating audit committee member independence and that the results of and basis for the board's determination with respect to each existing and potential audit committee member should be recorded in the board's minutes.

Guideline 30, *Holding Company Audit Committees*, provides guidance for complying with the audit committee requirements of part 363 at the holding company level. The FDIC is proposing to amend guideline 30 for consistency with the proposed revisions to the holding company provisions of § 363.1(b) and to reflect the difference in the audit committee composition requirements in § 363.5(a) for institutions with more than and less than $1 billion in total assets.

2. ''Independent of Management'' Considerations

Guideline 28, *''Independent of Management''* Considerations, identifies five factors for a board of directors to consider when determining the independence of an outside director. Guideline 29, *Lack of Independence*, states that a director who owns or controls 10 percent or more of any class of the institution's voting securities should not be considered ''independent of management.'' The FDIC has found that some of the factors in guideline 28 are so general that they fail to provide meaningful guidance to boards of directors. At the same time, many of the institutions subject to part 363 or their parent holding companies are public companies with securities listed on a national securities exchange. Under the SEC's Rule 10A–3 (17 CFR § 240.10A–3), each audit committee member of a listed issuer must be a director of the issuer and must otherwise be independent. The listing standards of the national securities exchange must set forth the criteria for determining the independence of directors who are to serve on a listed issuer's audit committee.

Based on its review, the FDIC believes that the independence criteria for audit committee members included in the listing standards of the national securities exchanges, together with the FDIC's existing stock ownership criterion in guideline 29, represent an appropriate framework for determining whether an outside director is ''independent of management'' for purposes of part 363. Furthermore, for an institution whose audit committee members or whose parent holding company's audit committee members, if the holding company meets the holding company provisions of § 363.1(b), are subject to the listing standards of a national securities exchange, allowing the institution to use these standards for part 363 purposes will reduce the institution's burden.

Therefore, the FDIC is proposing to combine guidelines 28 and 29 and provide expanded guidance for an institution's board of directors to use in its assessment of an outside director's relationship to the institution for the purposes of making ''independent of management'' determinations regarding audit committee members. For example, the proposed amendment to guideline 28 includes a list of criteria that an institution's board of directors should consider when determining whether an outside director would be considered ''independent of management.'' In developing the proposed list of criteria, the FDIC considered the portion of the listing standards of the national securities exchanges that apply to audit committees. An institution's board of directors may also conclude that it should consider additional criteria that may be appropriate in its particular circumstances. As an alternative to the listed criteria, proposed guideline 28 would permit an institution that is a public company or that is a subsidiary of a public company, when the holding company provisions of § 363.1(b) are met, to apply the audit committee provisions of the listing standards of the national securities exchange on which the public institution or its public parent company is listed for purposes of determining audit committee member independence. Similarly, all other institutions, including those that are not public companies, may elect to use the audit committee provisions of the listing standards of a national securities exchange or association for determining audit committee member independence.

3. Duties

According to section 36(g)(1)(B) of the FDI Act and § 363.5(a), an audit committee's duties include reviewing the basis for the Part 363 Annual Report with both management and the independent public accountant. Guideline 31 further provides that the audit committee's duties should be appropriate to the size of the institution and the complexity of its operations and it identifies additional duties that could be appropriate for the audit committee. These additional duties include discussing with management the selection and termination of the institution's independent public accountant. In addition, guideline 26 provides that, before engaging an independent public accountant, an institution should review and satisfy itself that the accountant is in compliance with the required qualifications set forth in guidelines 13 through 15, including the accountant's independence and receipt of a peer review.

Under section 301 of SOX, the audit committee of each public company listed on a national securities exchange or association must be responsible for the appointment, compensation, and oversight of the accounting firm engaged to prepare or issue an audit report or perform related work. As the SEC noted when it adopted its final rule implementing section 301, ''the auditing process may be compromised when a company's outside auditors view their responsibility as serving the company's management rather than its full board of directors or audit committee. This may occur if the auditor views management as the employer with hiring, firing and compensating powers. Under these conditions, the auditor may not have the appropriate incentive to raise concerns and conduct an objective review. * * * One way to help promote auditor independence, then, is for the auditor to be hired, evaluated and, if necessary, terminated by the audit committee.'' Because the intent and purpose of section 36 of the FDI Act is the early identification of needed improvements in financial management, it is critical for the accountants that perform audit

and attestation services for insured depository institutions subject to section 36 to have an appropriate incentive to raise concerns and conduct an objective review. In this regard, the FDIC believes it is a sound corporate governance practice for an institution's audit committee, rather than its management, to be responsible for the appointment, compensation, and oversight of the accountant, regardless of whether the institution is a public company.

Therefore, the FDIC is proposing to amend § 363.5(a), *Composition and duties*, and guideline 31, *Duties*, to specify that, in addition to reviewing with management and the independent public accountant the basis for the reports issued under part 363, the duties of the audit committee include the appointment, compensation, and oversight of the independent public accountant who performs services required under part 363. In order to discharge these duties with respect to the independent public accountant, the audit committee should also review and satisfy itself as to the independent public accountant's compliance with the independence, peer review, and other qualifications under part 363. Additionally, the audit committee should be familiar with and ensure management's compliance with the requirement to file notices concerning the engagement, resignation, or dismissal of an independent public accountant. The FDIC is proposing to include these duties in guideline 31.

4. Independent Public Accountant Engagement Letters

In response to an observed increase in the types and frequency of provisions in financial institutions' external audit engagement letters that limit the auditors' liability, the federal banking agencies issued an *Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters* (Interagency Advisory) in February 2006.[9] When they issued the Interagency Advisory, the agencies stated their belief that when institutions agree to limit their external auditors' liability in provisions in engagement letters, such provisions may weaken the external auditors' objectivity, impartiality, and performance, which may reduce the reliability of audits and thereby raise safety and soundness concerns. The reliability of audits is central to achieving the intent and purpose of section 36 of the FDI Act. Therefore, the FDIC is proposing to add § 363.5(c), *Independent public accountant engagement letters*, and amend guideline 31, *Duties*, to incorporate the principal provisions of the Interagency Advisory.

As proposed, § 363.5(c) and guideline 31 would require the audit committee to ensure that audit engagement letters and any related agreements with the independent public accountant for services to be performed under part 363 do not contain any limitation of liability provisions that: (1) Indemnify the independent public accountant against claims made by third parties; (2) hold harmless or release the independent public accountant from liability for claims or potential claims that might be asserted by the client insured depository institution, other than claims for punitive damages; or (3) limit the remedies available to the client insured depository institution. Consistent with the Interagency Advisory, the proposed amendment would not preclude the use of alternative dispute resolution agreements and jury trial waivers.

5. Transition Period for Forming and Restructuring Audit Committees

When an insured depository institution first exceeds the $500 million total assets threshold and becomes subject to part 363, particularly an institution with few shareholders, the FDIC has observed that, in some cases, such an institution encounters difficulty in satisfying the requirements governing the composition of the independent audit committee. If the board of directors lacks a sufficient number of outside directors who are independent of management to serve on the audit committee, the board members must identify and attract qualified individuals in their community who would be willing to become directors and audit committee members and who would be ''independent of management.'' The lack of guidance in part 363 on the amount of time in which an institution must bring its audit committee into compliance with the requirements governing its composition when an institution first becomes subject to part 363 further complicates this process. This lack of guidance on the time frame for attaining compliance also affects the other two asset-size thresholds applicable to audit committee composition.

To provide both clarity and regulatory relief, the FDIC is proposing to replace outdated guideline 35, which dealt with compliance with the audit committee requirements of part 363 when the regulation took effect in 1993, with a revised guideline 35, ''*Transition Period for Forming and Restructuring Audit Committees*.'' As proposed, guideline 35 would provide a one-year transition period for forming or restructuring the audit committee when an institution first becomes subject to part 363, when an institution's assets first reach the $1 billion asset-size threshold, and when an institution's assets first reach the $3 billion asset-size threshold. The proposed revised guideline would state that, when an institution first crosses one of these three thresholds based on its total assets at the beginning of its fiscal year, no regulatory action would be taken if the institution forms or restructures its audit committee to comply with the applicable requirements governing the composition of the committee by the end of that fiscal year, provided the institution complied with any applicable audit committee requirements for its preceding fiscal year.

F. Other Changes to Part 363

The FDIC also proposes to make other changes to part 363 to improve its clarity, readability, and consistency of language, and to correct or eliminate outdated terms, references, and provisions in the regulation and appendix A.

G. Proposed Amendment to Part 308, Subpart U

In August 2003, pursuant to section 36(g)(4) of the FDI Act, the FDIC and the other federal banking agencies jointly issued final rules governing their authority to take disciplinary actions against independent public accountants and accounting firms that perform audit and attestation services required by section 36.[10] Under the final rules, certain violations of law, negligent conduct, reckless violation of professional standards, or lack of qualifications to perform auditing services may be considered good cause to remove, suspend, or bar an accountant or firm from providing audit and attestation services for institutions subject to section 36. The rules also prohibit an accountant or accounting firm from performing these services if the accountant or firm has been removed, suspended, or debarred by one of the agencies, or if the SEC or PCAOB takes certain disciplinary actions against the accountant or firm. Additionally, the final rules require an accountant or an accounting firm to provide the agencies

[9] See 71 FR 6847, February 9, 2006, and FDIC Financial Institution Letter (FIL) 13–2006, issued on the same date. The Federal Financial Institutions Examination Council on behalf of the agencies issued the Interagency Advisory in proposed form for public comment on May 10, 2005 (70 FR 24576).

[10] See 68 FR 48256, April 13, 2003, and the FDIC's Financial Institution Letter (FIL) FIL–66–2006, dated August 18, 2003.

with written notification of the accountant's or firm's removal, suspension, or debarment. Part 308, subpart U, of the FDIC's rules and regulations implements the requirements of section 36(g)(4) of the FDI Act for institutions that are supervised by the FDIC. The FDIC is proposing to amend § 308.604(c) to identify the FDIC location where an accountant or accounting firm should file required notices of orders and actions regarding removal, suspension, or debarment.

IV. Request for Comments

The FDIC welcomes comments on all aspects of this proposal. In particular, the FDIC invites comments on the following:

1. As proposed, the rule would require management's assessment of compliance with designated safety and soundness laws and regulations to include a clear statement as to management's conclusion regarding compliance and disclose any noncompliance with such laws and regulations. The designated safety and soundness laws and regulations relate to loans to insiders and dividend restrictions. Management's assessment of compliance is included in the management report within the Part 363 Annual Report, which is available for public inspection. Should the disclosure of instances of noncompliance with these designated laws and regulations be made available for public inspection or should the FDIC designate such disclosure as privileged and confidential and not available to the public?

2. As proposed, the rule would require the total assets of a holding company's insured depository institution subsidiaries to comprise 75 percent or more of the holding company's consolidated total assets as of the beginning of its fiscal year in order for an institution to comply with part 363 at the holding company level. The holding company could be the institution's top-tier or any mid-tier holding company that meets the 75 percent threshold. Considering the costs and benefits of a threshold, is 75 percent or more of consolidated total assets an appropriate threshold? If not, what would be an appropriate threshold to use for compliance with part 363 at a holding company level?

V. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

VI. Solicitation of Comments on Impact on Community Banks

The FDIC seeks comments on the impact of this proposal on community banks. The FDIC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the FDIC specifically requests comments on the impact of the proposal on community banks' current resources, including personnel, and whether the goals of the proposed rule could be achieved, for community banks, through an alternative approach.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. The Small Business Administration (SBA) defines small banks as those with less than $165 million in assets. Because this rule expressly exempts insured depository institutions having assets of less than $500 million, it is inapplicable to small entities as defined by the SBA. Therefore, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

This proposed rule would revise a collection of information that has been reviewed and approved by the Office of Management and Budget (OMB) under control number 3064–0113, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). The principal revisions that bear on the collection of information under part 363 are the extension of the filing deadline for the Part 363 Annual Report from 90 to 120 days after the end of the fiscal year for an institution that is not a public company or a subsidiary of a public company, the replacement of 30-day extension requests (when an institution is confronted with extraordinary circumstances beyond its reasonable control) with late filing notices (regardless of the reason), the modification of the criteria governing the acceptability of reports at the holding company level rather than at the institution level, the expanded guidance on the content of the management report and the independent public accountant's internal control attestation report, the board of directors' use of an approved set of written criteria for determining whether an audit committee member is an outside director and is ''independent of management,'' and the new guidelines for institutions merged out of existence and for internal control reports for acquired businesses. It is anticipated that the overall effect of these changes will be a small burden increase for affected insured institutions. Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to Steven F. Hanft, Paperwork Clearance Officer, Room F–1062, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, with copies to the OMB desk officer for the FDIC by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to (202) 395–6974.

The paperwork burden associated with this rule was last reviewed in 2005. At that time, the FDIC estimated the burden of this information collection to be 65,612 hours for FDIC-supervised institutions. Before giving effect to the proposed amendments, the estimated

burden would be 79,721 hours, an adjustment of 14,109 hours attributable to an increase in the number of FDIC-supervised institutions subject to part 363. If the revisions in this proposed rule are implemented, the resulting estimated reporting burden for the collection of information would be 83,599 hours, a program increase of 3,878 hours over the adjusted burden of 79,721 hours. The most significant component of the increase is attributable to the proposed revised requirements related to audit committee composition.

Number of Respondents: 5,230.
Total Annual Responses: 16,231.
Total Annual Burden Hours: 83,599.

List of Subjects

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties, State nonmember banks.

12 CFR Part 363

Accounting, Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend title 12, chapter III, of the Code of Federal Regulations as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

2. Revise § 308.604(c) to read as follows:

§ 308.604 Notice of removal, suspension, or debarment.

* * * * *

(c) *Timing and place of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier. The written notice must be filed by the independent public accountant or accounting firm with the FDIC, Accounting and Securities Disclosure Section, 550 17th Street, NW., Washington, DC 20429.

3. Revise part 363 to read as follows:

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

Sec.
363.0 OMB control number.
363.1 Scope and definitions.
363.2 Annual reporting requirements.
363.3 Independent public accountant.
363.4 Filing and notice requirements.
363.5 Audit committees.
Appendix A to Part 363—Guidelines and Interpretations
Appendix B to Part 363—Illustrative Management Reports

Authority: 12 U.S.C. 1831m.

§ 363.0 OMB control number.

The information collection requirements in this part have been approved by the Office of Management and Budget under OMB control number 3064–0113.

§ 363.1 Scope and definitions.

(a) *Applicability.* This part applies to any insured depository institution with respect to any fiscal year in which its consolidated total assets at the beginning of such fiscal year are $500 million or more. The requirements specified in this part are in addition to any other statutory and regulatory requirements otherwise applicable to an insured depository institution.

(b) *Compliance by subsidiaries of holding companies.* (1) The audited financial statements requirement of § 363.2(a) for any fiscal year may be satisfied for an insured depository institution that is a subsidiary of a holding company by audited consolidated financial statements of the top-tier or any mid-tier holding company provided that the consolidated total assets of the insured depository institution (or the consolidated total assets of all insured depository institutions, regardless of size, if the holding company owns or controls more than one insured depository institution) comprise 75 percent or more of the consolidated total assets of the holding company at the beginning of its fiscal year.

(2) The other requirements of this part for an insured depository institution that is a subsidiary of a holding company may be satisfied by the top-tier or any mid-tier holding company if the insured depository institution meets the criterion specified in § 363.1(b)(1) and if:

(i) The services and functions comparable to those required of the insured depository institution by this part are provided at the holding company level; and

(ii) The insured depository institution has as of the beginning of its fiscal year:

(A) Total assets of less than $5 billion; or

(B) Total assets of $5 billion or more and a composite CAMELS rating of 1 or 2.

(3) The appropriate federal banking agency may revoke the exception in paragraph (b)(2) of this section for any institution with total assets in excess of $9 billion for any period of time during which the appropriate federal banking agency determines that the institution's exemption would create a significant risk to the Deposit Insurance Fund.

(c) *Financial reporting.* For purposes of the management report requirement of § 363.2(b) and the internal control reporting requirement of § 363.3(b), ''financial reporting'' includes both financial statements prepared in accordance with generally accepted accounting principles and those prepared for regulatory reporting purposes.

(d) *Definitions.* For purposes of this part, the following definitions apply:

(1) *AICPA* means the American Institute of Certified Public Accountants.

(2) *GAAP* means generally accepted accounting principles.

(3) *PCAOB* means the Public Company Accounting Oversight Board.

(4) *Public company* means an insured depository institution or other company that has a class of securities registered with the U.S. Securities and Exchange Commission or the appropriate federal banking agency under Section 12 of the Securities Exchange Act of 1934.

(5) *SEC* means the U.S. Securities and Exchange Commission.

(6) *SOX* means the Sarbanes-Oxley Act of 2002.

§ 363.2 Annual reporting requirements.

(a) *Audited financial statements.* Each insured depository institution shall prepare annual financial statements in accordance with GAAP, which shall be audited by an independent public accountant. The annual financial statements must reflect all material correcting adjustments identified by the independent public accountant.

(b) *Management report.* Each insured depository institution annually shall prepare, as of the end of the institution's

most recent fiscal year, a management report that must contain the following:

(1) A statement of management's responsibilities for preparing the institution's annual financial statements, for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and for complying with laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency;

(2) An assessment by management of the insured depository institution's compliance with such laws and regulations during such fiscal year. The assessment must state management's conclusion as to whether the insured depository institution has complied with the designated safety and soundness laws and regulations during the fiscal year and disclose any noncompliance with these laws and regulations; and

(3) For an insured depository institution with consolidated total assets of $1 billion or more at the beginning of such fiscal year, an assessment by management of the effectiveness of such internal control structure and procedures as of the end of such fiscal year that must include the following:

(i) A statement identifying the internal control framework [1] used by management to evaluate the effectiveness of the insured depository institution's internal control over financial reporting;

(ii) A statement that the assessment included controls over the preparation of regulatory financial statements in accordance with regulatory reporting instructions including identification of such regulatory reporting instructions; and

(iii) A statement expressing management's conclusion as to whether the insured depository institution's internal control over financial reporting is effective. Management must disclose all material weaknesses in internal control over financial reporting, if any, that it has identified. Management is precluded from concluding that the insured depository institution's internal control over financial reporting is effective if there are one or more material weaknesses.

[1] In the United States, the Committee of Sponsoring Organizations (COSO) of the Treadway Commission has published *Internal Control—Integrated Framework*, including an addendum on safeguarding assets. Known as the COSO report, this publication provides a suitable and available framework for purposes of management's assessment.

(c) *Management report signatures.* Subject to the criteria specified in § 363.1(b):

(1) If the audited financial statements requirement specified in § 363.2(a) is satisfied at the insured depository institution level and the management report requirement specified in § 363.2(b) is satisfied in its entirety at the insured depository institution level, the management report must be signed by the chief executive officer and the chief accounting officer or chief financial officer of the insured depository institution;

(2) If the audited financial statements requirement specified in § 363.2(a) is satisfied at the holding company level and the management report requirement specified in § 363.2(b) is satisfied in its entirety at the holding company level, the management report must be signed by the chief executive officer and the chief accounting officer or chief financial officer of the holding company; and

(3) If the audited financial statements requirement specified in § 363.2(a) is satisfied at the holding company level and:

(i) The management report requirement specified in § 363.2(b) is satisfied in its entirety at the insured depository institution level; or

(ii) One or more of the components of the management report specified in § 363.2(b) is satisfied at the holding company level and the remaining components of the management report are satisfied at the insured depository institution level, the management report must be signed by the chief executive officers and the chief accounting officers or chief financial officers of both the holding company and the insured depository institution and the management report must clearly indicate the level (institution or holding company) at which each of its components is being satisfied.

§ 363.3 Independent public accountant.

(a) *Annual audit of financial statements.* Each insured depository institution shall engage an independent public accountant to audit and report on its annual financial statements in accordance with GAAP and section 37 of the Federal Deposit Insurance Act (12 U.S.C. 1831n). The scope of the audit engagement shall be sufficient to permit such accountant to determine and report whether the financial statements are presented fairly and in accordance with GAAP.

(b) *Internal control over financial reporting.* For each insured depository institution with total assets of $1 billion or more at the beginning of the institution's fiscal year, the independent public accountant who audits the institution's financial statements shall examine, attest to, and report separately on, the assertion of management concerning the effectiveness of the institution's internal control structure and procedures for financial reporting. The attestation and report shall be made in accordance with generally accepted standards for attestation engagements or the PCAOB's auditing standards, if applicable. The accountant's report must not be dated prior to the date of the management report and management's assessment of the effectiveness of internal control over financial reporting. The accountant's report must include the following:

(1) A statement identifying the internal control framework used by the independent public accountant, which must be the same as the internal control framework used by management, to evaluate the effectiveness of the insured depository institution's internal control over financial reporting;

(2) A statement that the independent public accountant's evaluation included controls over the preparation of regulatory financial statements in accordance with regulatory reporting instructions including identification of such regulatory reporting instructions; and

(3) A statement expressing the independent public accountant's conclusion as to whether the insured depository institution's internal control over financial reporting is effective. The report must disclose all material weaknesses in internal control over financial reporting that the independent public accountant has identified. The independent public accountant is precluded from concluding that the insured depository institution's internal control over financial reporting is effective if there are one or more material weaknesses.

(c) *Notice by accountant of termination of services.* An independent public accountant performing an audit under this part who ceases to be the accountant for an insured depository institution shall notify the FDIC and the appropriate federal banking agency in writing of such termination within 15 days after the occurrence of such event, and set forth in reasonable detail the reasons for such termination. The written notice shall be filed at the place identified in § 363.4(f).

(d) *Communications with audit committee.* The independent public accountant must report the following on a timely basis to the audit committee:

(1) All critical accounting policies used by the insured depository institution,

(2) Alternative accounting treatments the independent public accountant has discussed with management, and

(3) Other written communications the independent public accountant has provided to management, such as a management letter or schedule of unadjusted differences.

(e) *Retention of working papers*. The independent public accountant must retain the working papers related to the audit of the insured depository institution's financial statements and, if applicable, the evaluation of the institution's internal control over financial reporting for seven years, unless a longer period of time is required by law.

(f) *Independence*. The independent public accountant must comply with the independence standards and interpretations of the AICPA, the SEC, and the PCAOB.

(g) *Peer reviews*. (1) Prior to commencing any services for an insured depository institution under this part, the independent public accountant must have received a peer review, or be enrolled in a peer review program, that meets acceptable guidelines. Acceptable peer reviews include peer reviews performed in accordance with the AICPA's Peer Review Standards and inspections conducted by the PCAOB.

(2) Within 15 days of receiving notification that a peer review has been accepted or a PCAOB inspection report has been issued, or before commencing any audit under this part, whichever is earlier, the independent public accountant must file two copies of the most recent peer review report and the most recent PCAOB inspection report, if any, accompanied by any letters of comments, response, and acceptance, with the FDIC, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429, if the report has not already been filed. Except for the portions of any peer review report and inspection report determined to be nonpublic by the AICPA and the PCAOB, respectively, the report will be made available for public inspection by the FDIC.

§ 363.4 Filing and notice requirements.

(a) *Part 363 Annual Report*. (1) Each insured depository institution shall file with each of the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor, two copies of its Part 363 Annual Report. A Part 363 Annual Report must contain audited comparative annual financial statements, the independent public accountant's report thereon, a management report, and, if applicable, the independent public accountant's attestation report on management's assessment concerning the institution's internal control structure and procedures for financial reporting as required by §§ 363.2(a), 363.3(a), 363.2(b), and 363.3(b), respectively.

(2) Subject to the criteria specified in § 363.1(b), each insured depository institution with consolidated total assets of less than $1 billion as of the beginning of its fiscal year that is required to file, or whose parent holding company is required to file, management's assessment of the effectiveness of internal control over financial reporting with the SEC or the appropriate federal banking agency in accordance with section 404 of SOX must submit a copy of such assessment to the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor with its Part 363 Annual Report as additional information. This assessment will not be considered part of the institution's Part 363 Annual Report.

(3) (i) Each insured depository institution that is neither a public company nor a subsidiary of a public company that meets the criterion specified in § 363.1(b)(1) shall file its Part 363 Annual Report within 120 days after the end of its fiscal year.

(ii) Each insured depository institution that is a public company or a subsidiary of public company that meets the criterion specified in § 363.1(b)(1) shall file its Part 363 Annual Report within 90 days after the end of its fiscal year.

(b) *Public availability*. The annual report in paragraph (a)(1) of this section shall be available for public inspection.

(c) *Independent public accountant's letters and reports*. (1) Except for the independent public accountant's reports that are included in its Part 363 Annual Report, each insured depository institution shall file with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor, a copy of any management letter or other report issued by its independent public accountant with respect to such institution and the services provided by such accountant pursuant to this part within 15 days after receipt. Such reports include, but are not limited to:

(i) Any written communication regarding matters that are required to be communicated to the audit committee (for example, critical accounting policies, alternative accounting treatments discussed with management, and any schedule of unadjusted differences),

(ii) Any written communication of significant deficiencies and material weaknesses in internal control required by the AICPA's or the PCAOB's auditing standards;

(iii) For institutions with total assets of less than $1 billion as of the beginning of their fiscal year that are public companies or subsidiaries of public companies that meet the criterion specified in § 363.1(b)(1), any independent public accountant's report on the audit of internal control over financial reporting required by section 404 of SOX and the PCAOB's auditing standards; and

(iv) For all institutions that are public companies or subsidiaries of public companies that meet the criterion specified in § 363.1(b)(1), any independent public accountant's written communication of all deficiencies in internal control over financial reporting that are of a lesser magnitude than significant deficiencies required by the PCAOB's auditing standards.

(2) Each insured depository institution shall file with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor, a copy of any audit engagement letter, including any related agreements and amendments, within 15 days of acceptance by the institution.

(d) *Notice of engagement or change of accountants*. Each insured depository institution shall provide, within 15 days after the occurrence of any such event, written notice to the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor of the engagement of an independent public accountant, or the resignation or dismissal of the independent public accountant previously engaged. The notice shall include a statement of the reasons for any such resignation or dismissal in reasonable detail.

(e) *Notification of late filing*. No extensions of time for filing reports required by § 363.4 shall be granted. An insured depository institution that is unable to timely file all or any portion of its Part 363 Annual Report or any other report or notice required by § 363.4 shall submit a written notice of late filing to the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor. The notice shall disclose the institution's inability to timely file all or specified portions of its Part 363 Annual Report or any other report or notice and the reasons therefore in reasonable detail. The late filing notice shall also state the date when the report or notice will be filed. The written notice shall be filed on or before the deadline for filing the

Part 363 Annual Report or any other report or notice, as appropriate.

(f) *Place for filing*. The Part 363 Annual Report, any written notification of late filing, and any other report or notice required by § 363.4 should be filed as follows:

(1) FDIC: Appropriate FDIC Regional or Area Office (Division of Supervision and Consumer Protection), *i.e.,* the FDIC regional or area office in the FDIC region or area that is responsible for monitoring the institution or, in the case of a subsidiary institution of a holding company, the consolidated company. A filing made on behalf of several covered institutions owned by the same parent holding company should be accompanied by a transmittal letter identifying all of the institutions covered.

(2) Office of the Comptroller of the Currency (OCC): Appropriate OCC Supervisory Office.

(3) Federal Reserve: Appropriate Federal Reserve Bank.

(4) Office of Thrift Supervision (OTS): Appropriate OTS District Office.

(5) State bank supervisor: The filing office of the appropriate state bank supervisor.

§ 363.5 Audit committees.

(a) *Composition and duties*. Each insured depository institution shall establish an audit committee of its board of directors, the composition of which complies with paragraphs (a)(1), (2), and (3) of this section. The duties of the audit committee shall include the appointment, compensation, and oversight of the independent public accountant who performs services required under this part, and reviewing with management and the independent public accountant the basis for the reports issued under this part.

(1) Each insured depository institution with total assets of $1 billion or more as of the beginning of its fiscal year shall establish an independent audit committee of its board of directors, the members of which shall be outside directors who are independent of management of the institution.

(2) Each insured depository institution with total assets of $500 million or more but less than $1 billion as of the beginning of its fiscal year shall establish an audit committee of its board of directors, the members of which shall be outside directors, the majority of whom shall be independent of management of the institution. The appropriate Federal banking agency may, by order or regulation, permit the audit committee of such an insured depository institution to be made up of less than a majority of outside directors who are independent of management, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the audit committee of the institution.

(3) An outside director is a director who is not, and within the preceding fiscal year has not been, an officer or employee of the institution or any affiliate of the institution.

(b) *Committees of large institutions*. The audit committee of any insured depository institution that has total assets of more than $3 billion, measured as of the beginning of each fiscal year, shall include members with banking or related financial management expertise, have access to its own outside counsel, and not include any large customers of the institution. If a large institution is a subsidiary of a holding company and relies on the audit committee of the holding company to comply with this rule, the holding company's audit committee shall not include any members who are large customers of the subsidiary institution.

(c) *Independent public accountant engagement letters*. (1) In performing its duties with respect to the appointment of the institution's independent public accountant, the audit committee shall ensure that engagement letters and any related agreements with the independent public accountant for services to be performed under this part do not contain any limitation of liability provisions that:

(i) Indemnify the independent public accountant against claims made by third parties;

(ii) Hold harmless or release the independent public accountant from liability for claims or potential claims that might be asserted by the client insured depository institution, other than claims for punitive damages; or

(iii) Limit the remedies available to the client insured depository institution.

(2) Alternative dispute resolution agreements and jury trial waiver provisions are not precluded provided that they do not incorporate any limitation of liability provisions set forth in paragraph (c)(1) of this section.

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Introduction

Congress added section 36, ''Early Identification of Needed Improvements in Financial Management'' (section 36), to the Federal Deposit Insurance Act (FDI Act) in 1991.

The FDIC Board of Directors adopted 12 CFR part 363 of its rules and regulations (the Rule) to implement those provisions of section 36 that require rulemaking. The FDIC also approved these ''Guidelines and Interpretations'' (the Guidelines) and directed that they be published with the Rule to facilitate a better understanding of, and full compliance with, the provisions of section 36.

Although not contained in the Rule itself, some of the guidance offered restates or refers to statutory requirements of section 36 and is therefore mandatory. If that is the case, the statutory provision is cited.

Furthermore, upon adopting the Rule, the FDIC reiterated its belief that every insured depository institution, regardless of its size or charter, should have an annual audit of its financial statements performed by an independent public accountant, and should establish an audit committee comprised entirely of outside directors.

The following Guidelines reflect the views of the FDIC concerning the interpretation of section 36. The Guidelines are intended to assist insured depository institutions (institutions), their boards of directors, and their advisors, including their independent public accountants and legal counsel, and to clarify section 36 and the Rule. It is recognized that reliance on the Guidelines may result in compliance with section 36 and the Rule which may vary from institution to institution. Terms which are not explained in the Guidelines have the meanings given them in the Rule, the FDI Act, or professional accounting and auditing literature.

Scope of Rule (§ 363.1)

1. *Measuring Total Assets.* To determine whether this part applies, an institution should use total assets as reported on its most recent Report of Condition (Call Report) or Thrift Financial Report (TFR), the date of which coincides with the end of its preceding fiscal year. If its fiscal year ends on a date other than the end of a calendar quarter, it should use its Call Report or TFR for the quarter end immediately preceding the end of its fiscal year.

2. *Insured Branches of Foreign Banks.* Unlike other institutions, insured branches of foreign banks are not separately incorporated or capitalized. To determine whether this part applies, an insured branch should measure claims on non-related parties reported on its Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (form FFIEC 002).

3. *Compliance by Holding Company Subsidiaries.* Audited consolidated financial statements and other reports or notices required by this part that are submitted by a holding company for any subsidiary institution should be accompanied by a cover letter identifying all subsidiary institutions subject to part 363 that are included in the holding company's submission. When submitting a Part 363 Annual Report, the cover letter should identify all subsidiary institutions subject to part 363 included in the consolidated financial statements and state whether the other annual report requirements (*i.e.*, management's statement of responsibilities, management's assessment of compliance with designated safety and soundness laws and regulations, and, if applicable, management's assessment of the effectiveness of internal control over financial reporting and the independent public accountant's attestation report on management's internal control assessment) are being satisfied for these institutions at the holding company level or at the institution level. An institution filing holding company consolidated financial statements as permitted by § 363.1(b)(1) also may report on changes in its independent public accountant on a holding company basis. An institution that does not meet the criteria in § 363.1(b)(2) must satisfy the remaining provisions of this part on an individual institution basis and maintain its own audit committee. Subject to the criteria in §§ 363.1(b)(1) and (2), a multi-tiered holding company may satisfy all of the requirements of this part at the top-tier or any mid-tier holding company level.

4. *Comparable Services and Functions.* Services and functions will be considered ''comparable'' to those required by this part if the holding company:

(a) Prepares reports used by the subsidiary institution to meet the requirements of this part;

(b) Has an audit committee that meets the requirements of this part appropriate to its largest subsidiary institution; and

(c) Prepares and submits management's assessment of compliance with the Designated Laws defined in guideline 12 and, if applicable, management's assessment of the effectiveness of internal control over financial reporting based on information concerning the relevant activities and operations of those subsidiary institutions within the scope of the Rule.

4A. *Financial Reporting.* (a) For purposes of this part, ''financial reporting'' includes financial statements prepared under GAAP and those prepared for regulatory reporting purposes. Financial statements prepared for regulatory reporting purposes consist of the schedules equivalent to the basic financial statements that are included in an institution's appropriate regulatory report, e.g., the bank Consolidated Reports of Condition and Income (Call Report) and the Thrift Financial Report (TFR).

(b) Financial statements prepared for regulatory reporting purposes do not include regulatory reports prepared by a non-bank subsidiary of a holding company or an institution. For example, if a bank holding company or an insured depository institution owns an insurance subsidiary, financial statements prepared for regulatory reporting purposes would not include any regulatory reports that the insurance subsidiary is required to submit to its appropriate insurance regulatory agency.

Annual Reporting Requirements (§ 363.2)

5. *Annual Financial Statements.* Each institution should prepare comparative annual consolidated financial statements (balance sheets and statements of income, changes in equity capital, and cash flows, with accompanying footnote disclosures) in accordance with GAAP for each of its two most recent fiscal years. Statements for the earlier year may be presented on an unaudited basis if the institution was not subject to this part for that year and audited statements were not prepared.

5A. *Institutions Merged Out of Existence.* An institution that is merged out of existence after the end of its fiscal year, but before the deadline for filing its Part 363 Annual Report (120 days after the end of its fiscal year for an institution that is neither a public company nor a subsidiary of a public company that meets the criterion specified in § 363.1(b)(1), and 90 days after the end of its fiscal year for an institution that is a public company or a subsidiary of a public company that meets the criterion specified in § 363.1(b)(1)), is not required to file a Part 363 Annual Report for the last fiscal year of its existence.

6. *Holding Company Statements.* Subject to the criterion specified in § 363.1(b)(1), subsidiary institutions may file copies of their holding company's audited financial statements filed with the SEC or prepared for their FR Y–6 Annual Report under the Bank Holding Company Act of 1956 to satisfy the audited financial statements requirement of § 363.2(a).

7. *Insured Branches of Foreign Banks.* An insured branch of a foreign bank should satisfy the financial statements requirement by filing one of the following for the two preceding fiscal years:

(a) Audited balance sheets, disclosing information about financial instruments with off-balance-sheet risk;

(b) Schedules RAL and L of form FFIEC 002, prepared and audited on the basis of the instructions for its preparation; or

(c) With written approval of the appropriate federal banking agency, consolidated financial statements of the parent bank.

8. *Management Report.* Management should perform its own investigation and review of the effectiveness of internal controls and compliance with the Designated Laws defined in guideline 12. Management also should maintain records of its determinations and assessments until the next federal safety and soundness examination, or such later date as specified by the FDIC or appropriate federal banking agency. Management should provide in its assessment of the effectiveness of internal controls, or supplementally, sufficient information to enable the accountant to report on its assertions. The management report of an insured branch of a foreign bank should be signed by the branch's managing official if the branch does not have a chief executive or financial officer.

8A. *Management's Assessment of the Effectiveness of Internal Control over Financial Reporting.* An institution with $1 billion or more in total assets as of the beginning of its fiscal year that is subject to both part 363 and the SEC's rules implementing section 404 of SOX (as well as a public holding company permitted under the holding company exception in § 363.1(b)(2) to file an internal control report on behalf of a subsidiary institution or institutions with $1 billion or more in total assets) can choose either of the following two options for filing management's report on internal control over financial reporting.

(i) Management can prepare two separate reports on the institution's or the holding company's internal control over financial reporting to satisfy the FDIC's part 363 requirements and the SEC's section 404 requirements; or

(ii) Management can prepare a single report on internal control over financial reporting provided that it satisfies all of the FDIC's part 363 requirements and all of the SEC's section 404 requirements.

8B. *Internal Control Reports for Acquired Businesses.* Generally, the FDIC expects management's and the related independent public accountant's report on an institution's

internal control over financial reporting to include controls at an institution in its entirety, including all of its consolidated entities. However, it may not always be possible for management to conduct an assessment of the internal control over financial reporting of an acquired business in the period between the consummation date of the acquisition and the due date of management's internal control assessment.

(a) In such instances, the acquired business's internal control structure and procedures for financial reporting may be excluded from management's assessment report and the accountant's attestation report on internal control over financial reporting. However, the FDIC expects management's assessment report to identify the acquired business, state that the acquired business is excluded, and indicate the significance of this business to the institution's consolidated financial statements. Notwithstanding management's exclusion of the acquired business's internal control from its assessment, management should disclose any material change to the institution's internal control over financial reporting due to the acquisition of this business. Also, management may not omit the assessment of the acquired business's internal control from more than one annual part 363 assessment report on internal control over financial reporting. When the acquired business's internal control over financial reporting is excluded from management's assessment, the independent public accountant may likewise exclude this acquired business's internal control over financial reporting from the accountant's evaluation of internal control over financial reporting.

(b) If the acquired business is or has a consolidated subsidiary that is an insured depository institution subject to part 363 and the institution is not merged out of existence before the deadline for filing its Part 363 Annual Report (120 days after the end of its fiscal year for an institution that is neither a public company nor a subsidiary of a public company that meets the criterion specified in § 363.1(b)(1), and 90 days after the end of its fiscal year for an institution that is a public company or a subsidiary of a public company that meets the criterion specified in § 363.1(b)(1)), the acquired institution must continue to comply with all of the applicable requirements of part 363, including filing its Part 363 Annual Report.

9. *Safeguarding of Assets.* ''Safeguarding of assets,'' as the term relates to internal control policies and procedures regarding financial reporting and which has precedent in accounting and auditing literature, should be encompassed in the management report and the independent public accountant's attestation discussed in guideline 18. Testing the existence of and compliance with internal controls on the management of assets, including loan underwriting and documentation, represents a reasonable implementation of section 36. The FDIC expects such internal controls to be encompassed by the assertion in the management report, but the term ''safeguarding of assets'' need not be specifically stated. The FDIC does not require the accountant to attest to the adequacy of safeguards, but does require the accountant to determine whether safeguarding policies exist.[2]

10. *Standards for Internal Control.* The management of each insured depository institution with $1 billion or more in total assets as of the beginning of its fiscal year should base its assessment of the effectiveness of the institution's internal control over financial reporting on a suitable, recognized control framework established by a body of experts that followed due-process procedures, including the broad distribution of the framework for public comment. In addition to being available to users of management's reports, a framework is suitable only when it:

- Is free from bias;
- Permits reasonably consistent qualitative and quantitative measurements of an insured depository institution's internal control over financial reporting;
- Is sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of an insured depository institution's internal control over financial reporting are not omitted; and
- Is relevant to an evaluation of internal control over financial reporting.

In the United States, *Internal Control—Integrated Framework,* including its addendum on safeguarding assets, which was published by the Committee of Sponsoring Organizations of the Treadway Commission, and is known as the COSO report, provides a suitable and recognized framework for purposes of management's assessment. Other suitable frameworks have been published in other countries or may be developed in the future. Such other suitable frameworks may be used by management and the institution's independent public accountant in assessments, attestations, and audits of internal control over financial reporting.

11. *Service Organizations.* Although service organizations should be considered in determining if internal controls are adequate, an institution's independent public accountant, its management, and its audit committee should exercise independent judgment concerning that determination. Onsite reviews of service organizations may not be necessary to prepare the report required by the Rule, and the FDIC does not intend that the Rule establish any such requirement.

12. *Compliance with Laws and Regulations.* The designated laws and regulations are the federal laws and regulations concerning loans to insiders and the federal and state laws and regulations concerning dividend restrictions (the Designated Laws). Table 1 to this Appendix A lists the designated federal laws and regulations pertaining to insider loans and dividend restrictions that are applicable to each type of institution.

[2] It is management's responsibility to establish policies concerning underwriting and asset management and to make credit decisions. The auditor's role is to test compliance with management's policies relating to financial report.

Role of Independent Public Accountant (§ 363.3)

13. *General Qualifications.* To provide audit and attest services to insured depository institutions, an independent public accountant should be registered or licensed to practice as a public accountant, and be in good standing, under the laws of the state or other political subdivision of the United States in which the home office of the institution (or the insured branch of a foreign bank) is located. As required by section 36(g)(3)(A)(i), the accountant must agree to provide copies of any working papers, policies, and procedures relating to services performed under this part.

14. [Reserved.]

15. *Peer Review Guidelines.* The following peer review guidelines are acceptable:

(a) The external peer review should be conducted by an organization independent of the accountant or firm being reviewed, as frequently as is consistent with professional accounting practices;

(b) The peer review (other than a PCAOB inspection) should be generally consistent with AICPA Peer Review Standards; and

(c) The review should include, if available, at least one audit on an insured depository institution or consolidated depository institution holding company.

16. [Reserved.]

17. *Information to be Provided to the Independent Public Accountant.* Attention is directed to section 36(h) which requires institutions to provide specified information to their accountants. An institution also should provide its accountant with copies of any notice that the institution's capital category is being changed or reclassified under section 38 of the FDI Act, and any correspondence from the appropriate federal banking agency concerning compliance with this part.

18. *Attestation Report and Management Report.* The independent public accountant should provide the institution with any management letter and, if applicable, an internal control attestation report (as required by section 36(c)(1)) at the conclusion of the audit. The independent public accountant's attestation report on internal control over financial reporting must specifically include a statement as to regulatory reporting. If a holding company subsidiary relies on its holding company management report, the accountant may attest to and report on the management's assertions in one report, without reporting separately on each subsidiary covered by the Rule. The FDIC has determined that management letters are exempt from public disclosure.

19. *Reviews with Audit Committee and Management.* The independent public accountant should meet with the institution's audit committee to review the accountant's reports required by this part before they are filed. It also may be appropriate for the accountant to review its findings with the institution's board of directors and management.

20. *Notice of Termination.* The notice of termination required by § 363.3(c) should state whether the independent public accountant agrees with the assertions contained in any notice filed by the

institution under § 363.4(d), and whether the institution's notice discloses all relevant reasons for the accountant's termination. Subject to the criteria specified in § 363.1(b)(1) regarding compliance with the audited financial statements requirement at the holding company level, the independent public accountant for an insured depository institution that is a public company and files reports with its appropriate federal banking agency, or is a subsidiary of a public company that files reports with the SEC, may submit the letter it furnished to management to be filed with the institution's or the holding company's current report (*e.g.*, SEC Form 8–K) concerning a change in accountant to satisfy the notice requirements of § 363.3(c). Alternatively, if the independent public accountant confirms that management has filed a current report (*e.g.*, SEC Form 8–K) concerning a change in accountant that satisfies the notice requirements of § 363.4(d) and includes an independent public accountant's letter that satisfies the requirements of § 363.3(c), the independent public accountant may rely on the current report (*e.g.*, SEC Form 8–K) filed with the FDIC by management concerning a change in accountant to satisfy the notice requirements of § 363.3(c).

21. *Reliance on Internal Auditors.* Nothing in this part or this appendix is intended to preclude the ability of the independent public accountant to rely on the work of an institution's internal auditor.

Filing and Notice Requirements (§ 363.4)

22. [Reserved.]

23. *Notification of Late Filing.* (a) An institution's submission of a written notice of late filing does not cure the requirement to timely file the Part 363 Annual Report or other reports or notices required by § 363.4. An institution's failure to timely file is considered an apparent violation of part 363.

(b) If the late filing notice submitted pursuant to § 363.4(e) relates only to a portion of a Part 363 Annual Report or any other report or notice, the insured depository institution should file the other components of the report or notice within the prescribed filing period together with a cover letter that indicates which components of its Part 363 Annual Report or other report or notice are omitted. An institution may combine the written late filing notice and the cover letter into a single notice that is submitted together with the other components of the report or notice that are being timely filed.

24. *Public Availability.* Each institution's Part 363 Annual Report should be available for public inspection at its main and branch offices no later than 15 days after it is filed with the FDIC. Alternatively, an institution may elect to mail one copy of its Part 363 Annual Report to any person who requests it. The Part 363 Annual Report should remain available to the public until the Part 363 Annual Report for the next year is available. An institution may use its Part 363 Annual Report under this part to meet the annual disclosure statement required by 12 CFR 350.3, if the institution satisfies all other requirements of 12 CFR part 350.

25. [Reserved.]

26. *Notices Concerning Accountants.* With respect to any selection, change, or termination of an independent public accountant, an institution's management and audit committee should be familiar with the notice requirements in § 363.4(d) and guideline 20, and management should send a copy of any notice required under § 363.4(d) to the independent public accountant when it is filed with the FDIC. An insured depository institution that is a public company and files reports required under the federal securities laws with its appropriate federal banking agency, or is a subsidiary of a public company that files such reports with the SEC, may use its current report (*e.g.*, SEC Form 8–K) concerning a change in accountant to satisfy the notice requirements of § 363.4(d) subject to the criterion of § 363.1(b)(1) regarding compliance with the audited financial statements requirement at the holding company level.

Audit Committees (§ 363.5)

27. *Composition.* The board of directors of each institution should determine whether each existing or potential audit committee member meets the requirements of section 36 and this part. To do so, the board of directors should maintain an approved set of written criteria for determining whether a director who is to serve on the audit committee is an outside director (as defined in § 363.5(a)(3)) and is independent of management. At least annually, the board of each institution should apply these criteria and determine whether each existing or potential audit committee member is an outside director. In addition, at least annually, the board of an institution with $1 billion or more in total assets at the beginning of its fiscal year should determine whether all existing and potential audit committee members are ''independent of management of the institution'' and the board of an institution with total assets of $500 million or more but less than $1 billion as of the beginning of its fiscal year should determine whether the majority of all existing and potential audit committee members are ''independent of management of the institution.'' The minutes of the board of directors should contain the results of and the basis for its determinations with respect to each existing and potential audit committee member. Because an insured branch of a foreign bank does not have a separate board of directors, the FDIC will not apply the audit committee requirements to such branch. However, any such branch is encouraged to make a reasonable good faith effort to see that similar duties are performed by persons whose experience is generally consistent with the Rule's requirements for an institution the size of the insured branch.

28. *''Independent of Management'' Considerations.* It is not possible to anticipate, or explicitly provide for, all circumstances that might signal potential conflicts of interest in, or that might bear on, an outside director's relationship to an insured depository institution and whether the outside director should be deemed ''independent of management.'' When assessing an outside director's relationship with an institution, the board of directors should consider the issue not merely from the standpoint of the director himself or herself, but also from the standpoint of persons or organizations with which the director has an affiliation. These relationships can include, but are not limited to, commercial, banking, consulting, charitable, and family relationships. The board of directors should apply its approved set of written criteria for determining whether existing and potential members of the audit committee are outside directors and whether they are ''independent of management.'' To assist boards of directors in fulfilling this requirement, paragraphs (a) through (d) of this guideline provide guidance for determining whether audit committee members are ''independent of management.'' (a) Notwithstanding the criteria set forth in paragraphs (b), (c), and (d) of this guideline, if an outside director, either directly or indirectly, owns or controls, or has owned or controlled within the preceding fiscal year, 10 percent or more of any outstanding class of voting securities of the institution, the outside director will not be considered ''independent of management.''

(b) The following list sets forth additional criteria, that, at a minimum, a board of directors should consider when determining whether an outside director is ''independent of management.'' The board of directors may conclude that additional criteria are also relevant to this determination in light of the particular circumstances of its institution. Accordingly, an outside director will not be considered ''independent of management'' if:

(1) The director serves, or has served within the last three years, as a consultant, advisor, promoter, underwriter, legal counsel, or trustee of or to the institution or its affiliates.

(2) The director has been, within the last three years, an employee of the institution or any of its affiliates or an immediate family member is, or has been within the last three years, an executive officer of the institution or any of its affiliates.

(3) The director has participated in the preparation of the financial statements of the institution or any of its affiliates at any time during the last three years.

(4) The director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than $60,000 in direct or indirect compensation from the institution or any of its affiliates other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service). Direct compensation also would not include compensation received by the director for former service as an interim chairman or interim chief executive officer. Indirect compensation includes payments to spouses and children as well as organizations that provide financial services to the institution or any of its affiliates in which the director is a partner or principal.

(5) The director or an immediate family member is a current partner of a firm that performs internal or external auditing services for the institution or any of its affiliates; the director is a current employee of such a firm; the director has an immediate family member who is a current employee of

such a firm and who participates in the firm's audit, assurance, or tax compliance practice; or the director or an immediate family member was within the last three years (but no longer is) a partner or employee of such a firm and personally worked on the audit of the insured depository institution or any of its affiliates within that time.

(6) The director or an immediate family member is, or has been within the last three years, employed as an executive officer of another entity where any of the present executive officers of the institution or any of its affiliates at the same time serves or served on that entity's compensation committee.

(7) The director is a current employee, or an immediate family member is a current executive officer, of an entity that has made payments to, or received payments from, the institution or any of its affiliates for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of $200 thousand, or 5 percent of such entity's consolidated gross revenues. This would include payments made by the institution or any of its affiliates to not-for-profit entities where the director is an executive officer or where an immediate family member of the director is an executive officer.

(8) For purposes of paragraph (b) of this guideline, the following definitions apply:

(i) An ''immediate family member'' includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.

(ii) The term affiliate of, or a person affiliated with, a specified person, means a person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) An insured depository institution that is a public company and a listed issuer (as defined in Rule 10A–3 of the Securities Exchange Act of 1934 (Exchange Act)), or is a subsidiary of a public company that meets the criterion specified in § 363.1(b)(1) and is a listed issuer, may use the definition of audit committee member independence set forth in the listing standards applicable to the public institution or its public company parent.

(d) All other insured depository institutions may use the definition of audit committee member independence set forth in the listing standards of a national securities exchange that is registered with the SEC pursuant to section 6 of the Exchange Act or a national securities association that is registered with the SEC pursuant to section 15A(a) of the Exchange Act.

29. [Reserved.]

30. *Holding Company Audit Committees.* (a) When an insured depository institution satisfies the requirements for the holding company exception specified in §§ 363.1(b)(1) and (2), the audit committee requirement of this part may be satisfied by the audit committee of the top-tier or any mid-tier holding company. Members of the audit committee of the holding company should meet all the membership requirements applicable to the largest subsidiary depository institution subject to part 363 and should perform all the duties of the audit committee of a subsidiary institution subject to part 363, even if the holding company directors are not directors of the institution.

(b) When an insured depository institution subsidiary with total assets of $1 billion or more as of the beginning of its fiscal year does not meet the requirements for the holding company exception specified in §§ 363.1(b)(1) and (2) or maintains its own separate audit committee to satisfy the requirements of this part, the members of the audit committee of the top-tier or any mid-tier holding company may serve on the audit committee of the subsidiary institution if they are otherwise independent of management of the subsidiary institution, and, if applicable, meet any other requirements for a large subsidiary institution covered by this part.

(c) When an insured depository institution with total assets of $500 million or more but less than $1 billion as of the beginning of its fiscal year does not meet the requirements for the holding company exception specified in §§ 363.1(b)(1) and (2) or maintains its own separate audit committee to satisfy the requirements of this part, the members of the audit committee of the top-tier or any mid-tier holding company may serve on the audit committee of the subsidiary institution provided a majority of its audit committee members are independent of management of the subsidiary institution.

(d) Officers and employees of a top-tier or any mid-tier holding company may not serve on the audit committee of its subsidiary institutions.

31. *Duties.* The audit committee should perform all duties determined by the institution's board of directors, and it should maintain minutes and other relevant records of its meetings and decisions. The duties of the audit committee should be appropriate to the size of the institution and the complexity of its operations, and, at a minimum, should include the appointment, compensation, and oversight of the independent public accountant; reviewing with management and the independent public accountant the basis for their respective reports issued under §§ 363.2(a) and (b) and §§ 363.3(a) and (b); reviewing and satisfying itself as to the independent public accountant's compliance with the required qualifications for independent public accountants set forth in §§ 363.3(f) and (g) and guidelines 13 through16; ensuring that audit engagement letters comply with the provisions of § 363.5(c) before engaging an independent public accountant; being familiar with the notice requirements in § 363.4(d) and guideline 20 regarding the selection, change, or termination of an independent public accountant; and ensuring that management sends a copy of any notice required under § 363.4(d) to the independent public accountant when it is filed with the FDIC. Appropriate additional duties could include:

(a) Reviewing with management and the independent public accountant the scope of services required by the audit, significant accounting policies, and audit conclusions regarding significant accounting estimates;

(b) Reviewing with management and the accountant their assessments of the effectiveness of internal control over financial reporting, and the resolution of identified material weaknesses and significant deficiencies in internal control over financial reporting, including the prevention or detection of management override or compromise of the internal control system;

(c) Reviewing with management the institution's compliance with the designated laws and regulations identified in guideline 12;

(d) Discussing with management and the independent public accountant any significant disagreements between management and the independent public accountant; and

(e) Overseeing the internal audit function.

32. *Banking or Related Financial Management Expertise.* At least two members of the audit committee of a large institution shall have ''banking or related financial management expertise'' as required by section 36(g)(1)(C)(i). This determination is to be made by the board of directors of the insured depository institution. A person will be considered to have such required expertise if the person has significant executive, professional, educational, or regulatory experience in financial, auditing, accounting, or banking matters as determined by the board of directors. Significant experience as an officer or member of the board of directors or audit committee of a financial services company would satisfy these criteria.

33. *Large Customers.* Any individual or entity (including a controlling person of any such entity) which, in the determination of the board of directors, has such significant direct or indirect credit or other relationships with the institution, the termination of which likely would materially and adversely affect the institution's financial condition or results of operations, should be considered a ''large customer'' for purposes of § 363.5(b).

34. *Access to Counsel.* The audit committee should be able to retain counsel at its discretion without prior permission of the institution's board of directors or its management. Section 36 does not preclude advice from the institution's internal counsel or regular outside counsel. It also does not require retaining or consulting counsel, but if the committee elects to do either, it also may elect to consider issues affecting the counsel's independence. Such issues would include whether to retain or consult only counsel not concurrently representing the institution or any affiliate, and whether to place limitations on any counsel representing the institution concerning matters in which such counsel previously participated personally and substantially as outside counsel to the committee.

35. *Transition Period for Forming and Restructuring Audit Committees.*

(a) When an insured depository institution's total assets at the beginning of its fiscal year are $500 million or more for the first time and it thereby becomes subject to part 363, no regulatory action will be taken if the institution forms or restructures its audit committee to comply with § 363.5(a)(2) by the end of that fiscal year.

(b) When an insured depository institution's total assets at the beginning of

its fiscal year are $1 billion or more for the first time, no regulatory action will be taken if the institution forms or restructures its audit committee to comply with § 363.5(a)(1) by the end of that fiscal year, provided that the composition of its audit committee meets the requirements specified in § 363.5(a)(2) at the beginning of that fiscal year, if such requirements were applicable.

(c) When an insured depository institution's total assets at the beginning of its fiscal year are $3 billion or more for the first time, no regulatory action will be taken if the institution forms or restructures its audit committee to comply with § 363.5(b) by the end of that fiscal year, provided that the composition of its audit committee meets the requirements specified in § 363.5(a)(1) at the beginning of that fiscal year, if such requirements were applicable.

Other

36. *Modifications of Guidelines.* The FDIC's Board of Directors has delegated to the Director of the FDIC's Division of Supervision and Consumer Protection authority to make and publish in the **Federal Register** minor technical amendments to the Guidelines in this appendix, in consultation with the other appropriate federal banking agencies, to reflect the practical experience gained from implementation of this part. It is not anticipated any such modification would be effective until affected institutions have been given reasonable advance notice of the modification. Any material modification or amendment will be subject to review and approval of the FDIC Board of Directors.

TABLE 1 TO APPENDIX A

Designated Federal Laws and Regulations Applicable to

		National banks	State ember banks	State non-member banks	Savings associations
Insider Loans—Parts and/or Sections of Title 12 of the United States Code					
375a	Loans to Executive Officers of Banks	√	√	(A)	(A)
375b	Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Banks.	√	√	(A)	(A)
1468(b)	Extensions of Credit to Executive Officers, Directors, and Principal Shareholders.				√
1828(j)(2)	Extensions of Credit to Officers, Directors, and Principal Shareholders.			√	
1828(j)(3)(B)	Extensions of Credit to Officers, Directors, and Principal Shareholders.	(B)		(C)	
Parts and/or Sections of Title 12 of the Code of Federal Regulations					
31	Extensions of Credit to Insiders	√			
32	Lending Limits	√			
215	Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks.	√	√	(D)	(E)
337.3	Limits on Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Insured Nonmember Banks.			√	
563.43	Loans by Savings Associations to Their Executive Officers, Directors, and Principal Shareholders.				√
Dividend Restrictions—Parts and/or Sections of Title 12 of the United States Code					
56	Prohibition on Withdrawal of Capital and Unearned Dividends.	√	√		
60	Dividends and Surplus Fund	√	√		
1467a(f)	Declaration of Dividend				√
1831o(d)(1)	Prompt Corrective Action—Capital Distributions Restricted.	√	√	√	√
Parts and/or Sections of Title 12 of the Code of Federal Regulations					
5 Subpart E	Payment of Dividends	√			
6.6	Prompt Corrective Action—Restrictions on Undercapitalized Institutions.	√			
208.5	Dividends and Other Distributions		√		
208.45	Prompt Corrective Action—Restrictions on Undercapitalized Institutions.		√		
325.105	Prompt Corrective Action—Restrictions on Undercapitalized Institutions.			√	
563 Subpart E	Capital Distributions				√
565.6	Prompt Corrective Action—Restrictions on Undercapitalized Institutions.				√

A. Subsections (g) and (h) of section 22 of the Federal Reserve Act [12 U.S.C. 375a, 375b].
B. Applies only to insured federal branches of foreign banks.
C. Applies only to insured state branches of foreign banks.
D. See 12 CFR 337.3.
E. See 12 CFR 563.43.

Appendix B to Part 363—Illustrative Management Reports

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6. Illustrative Management Report—Combined Statement of Management's Responsibilities, Management's Assessment of Compliance with Laws and Regulations, and Management's Assessment of the Effectiveness of Internal Control Over Financial Reporting
7. Illustrative Cover Letter—Compliance by Holding Company Subsidiaries

1. *General.* The reporting scenarios, illustrative management reports, and the cover letter (when complying at the holding company level) in Appendix B to part 363 are intended to assist managements of insured depository institutions in complying with the annual reporting requirements of § 363.2 and guideline 3, *Compliance by Holding Company Subsidiaries,* of Appendix A to part 363. However, use of the wording in the illustrative management reports and cover letter is not required. The managements of insured depository institutions are encouraged to tailor their management reports and cover letters to fit their particular circumstances and avoid the use of ''boilerplate'' language. Terms that are not explained in Appendix B have the meanings given them in part 363, the FDI Act, or professional accounting and auditing literature. Instructions to the preparer of the management reports are shown in brackets within the illustrative reports.

2. *Reporting Scenarios for Institutions that are Holding Company Subsidiaries.* (a) Subject to the criteria specified in § 363.1(b), an insured depository institution that is a subsidiary of a holding company has flexibility in satisfying the reporting requirements of part 363. When reporting at the holding company level, the management report should identify those subsidiary institutions that are subject to part 363 and the extent to which they are included in the scope of the management report. The following reporting scenarios reflect how an insured depository institution that meets the criteria set forth in § 363.1(b) could satisfy the annual reporting requirements of § 363.2. Other reporting scenarios are possible.

(i) An institution that is a subsidiary of a holding company may satisfy the requirements for audited financial statements, management's statement of responsibilities, management's assessment of the institution's compliance with laws and regulations, management's assessment of the effectiveness of internal control over financial reporting (if applicable), and the independent public accountant's attestation on management's assertion as to the effectiveness of internal control over financial reporting (if applicable) at the insured depository institution level.

(ii) An institution that is a subsidiary of a holding company may satisfy the requirements for audited financial statements, management's statement of responsibilities, management's assessment of the institution's compliance with laws and regulations, management's assessment of the effectiveness of internal control over financial reporting (if applicable), and the independent public accountant's attestation on management's assertion as to the effectiveness of internal control over financial reporting (if applicable) at the holding company level.

(iii) An institution that is a subsidiary of a holding company may satisfy the requirement for audited financial statements at the holding company level and may satisfy the requirements for management's statement of responsibilities, management's assessment of the institution's compliance with laws and regulations, management's assessment of the effectiveness of internal control over financial reporting (if applicable), and the independent public accountant's attestation on management's assertion as to the effectiveness of internal control over financial reporting (if applicable) at the insured depository institution level.

(iv) An institution that is a subsidiary of a holding company may satisfy the requirements for audited financial statements, management's statement of responsibilities, and management's assessment of the institution's compliance with laws and regulations at the insured depository institution level and may satisfy the requirements for the assessment by management of the effectiveness of internal control over financial reporting (if applicable), and the independent public accountant's attestation on management's assertion as to the effectiveness of internal control over financial reporting (if applicable) at the holding company level.

(b) For an institution with total assets of $1 billion or more as of the beginning of its fiscal year, the assessment by management of the effectiveness of internal control over financial reporting and the independent public accountant's attestation on management's assertion as to the effectiveness of internal control over financial reporting (if applicable) must both be performed at the same level, i.e., either at the insured depository institution level or at the holding company level.

(c) Financial statements prepared for regulatory reporting purposes encompass the schedules equivalent to the basic financial statements in an institution's appropriate regulatory report, e.g., the bank Consolidated Reports of Condition and Income (Call Report) and the Thrift Financial Report (TFR). When internal control assessments and attestations are performed at the holding company level, the FDIC believes that holding companies have flexibility in interpreting ''financial reporting'' as it relates to ''regulatory reporting'' and has not objected to several reporting approaches employed by holding companies to cover ''regulatory reporting.'' Certain holding companies have had management's assessment and the accountant's attestation cover the schedules equivalent to the basic financial statements that are included in the appropriate regulatory report, e.g., Call Report and the TFR, of each subsidiary institution subject to part 363. Other holding companies have had management's assessment and the accountant's attestation cover the schedules equivalent to the basic financial statements that are included in the holding company's year-end regulatory report (FR Y–9C report) to the Federal Reserve Board.

3. *Illustrative Management Report—Statement of Management's Responsibilities.* The following illustrative statements of management's responsibilities satisfy the requirements of § 363.2(b)(1).

(a) Statement Made at Insured Depository Institution Level

To: The Board of Directors and Audit Committee, ABC Depository Institution

Re: Statement of Management's Responsibilities

The management of ABC Depository Institution (the ''Institution'') is responsible for preparing the Institution's annual financial statements in accordance with generally accepted accounting principles; for establishing and maintaining an adequate internal control structure and procedures for financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions]; and for complying with laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable].

ABC Depository Institution

_____

John Doe, Chief Executive Officer

Date: _____

_____

Jane Doe, Chief Financial Officer

Date: _____

(b) Statement Made at Holding Company Level

To: The Board of Directors and Audit Committee BCD Holding Company

Re: Statement of Management's Responsibilities

The management of BCD Holding Company (the ''Company'') is responsible for preparing the Company's annual financial statements in accordance with generally accepted accounting principles; for establishing and maintaining an adequate internal control structure and procedures for financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions]; and for complying with laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable]. The following subsidiary institutions of the Company that are subject to Part 363 are included in the scope of this management report: [Identify the subsidiary institutions.]

BCD Holding Company

_____
John Doe, Chief Executive Officer
Date: _____

_____
Jane Doe, Chief Financial Officer
Date: _____

4. *Illustrative Management Report—Management's Assessment of Compliance with Laws and Regulations.* The following illustrative reports of management's assessment of compliance with laws and regulations satisfy the requirements of § 363.2(b)(2).

(a) Statement Made at Insured Depository Institution Level—Compliance

To: The Board of Directors and Audit Committee, ABC Depository Institution

Re: Management's Assessment of Compliance with Laws and Regulations

The management of ABC Depository Institution (the ''Institution'') has assessed the Institution's compliance with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX. Based upon its assessment, management has concluded that the Institution complied with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX.

ABC Depository Institution

_____
John Doe, Chief Executive Officer
Date: _____

_____
Jane Doe, Chief Financial Officer
Date: _____

(b) Statement Made at Insured Depository Institution Level—Noncompliance

To: The Board of Directors and Audit Committee, ABC Depository Institution

Re: Management's Assessment of Compliance with Laws and Regulations

The management of ABC Depository Institution (the ''Institution'') has assessed the Institution's compliance with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX. Because of the noncompliance during the fiscal year that ended on December 31, 20XX, with the laws and regulations relating to safety and soundness noted below, management has determined that the Institution did not comply with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX.

[Identify and describe the instance or instances of noncompliance with the laws and regulations relating to safety and soundness.]

ABC Depository Institution

_____
John Doe, Chief Executive Officer
Date: _____

_____
Jane Doe, Chief Financial Officer
Date: _____

(c) Statement Made at Holding Company Level—Compliance

To: The Board of Directors and Audit Committee, BCD Holding Company

Re: Management's Assessment of Compliance with Laws and Regulations

The management of BCD Holding Company (the ''Company'') has assessed the Company's compliance with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX. Based upon its assessment, management has concluded that the Company complied with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX. The following subsidiary institutions of the Company that are subject to Part 363 are included in the scope of management's assessment of compliance with laws and regulations: [Identify the subsidiary institutions.]

BCD Holding Company

_____
John Doe, Chief Executive Officer
Date: _____

_____
Jane Doe, Chief Financial Officer
Date: _____

(d) Statement Made at Holding Company Level—Noncompliance

To: The Board of Directors and Audit Committee, BCD Holding Company

Re: Management's Assessment of Compliance with Laws and Regulations

The management of BCD Holding Company (the ''Company'') has assessed the Company's compliance with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX. The following subsidiary institutions of the Company that are subject to Part 363 are included in the scope of management's assessment of compliance with laws and regulations: [Identify the subsidiary institutions.]

Because of the noncompliance during the fiscal year that ended on December 31, 20XX, with the laws and regulations relating to safety and soundness noted below, management has determined that the Company did not comply with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX.

[Identify and describe the instance or instances of noncompliance with the laws and regulations relating to safety and soundness.]

BCD Holding Company

_____
John Doe, Chief Executive Officer
Date: _____

_____
Jane Doe, Chief Financial Officer
Date: _____

5. *Illustrative Management Report—Management's Assessment of Internal Control Over Financial Reporting.* The following illustrative reports of management's assessment of internal control over financial reporting satisfy the requirements of § 363.2(b)(3).

(a) Statement Made at Insured Depository Institution Level—No Material Weaknesses

To: The Board of Directors and Audit Committee, ABC Depository Institution

Re: Management's Assessment of Internal Control Over Financial Reporting

ABC Depository Institution's (the ''Institution'') internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, including those prepared for regulatory reporting purposes [specify the regulatory reports]. The Institution's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Institution; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Institution are being made only in accordance with authorizations of management and directors of the Institution; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Institution's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Management assessed the effectiveness of the Institution's internal control over financial reporting, including controls over preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework. Based on that assessment, management concluded that, as of December 31, 20XX, the Institution's internal control over financial reporting,

including controls over preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], is effective based on the criteria established in Internal Control—Integrated Framework.

Management's assessment of the effectiveness of internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, has been audited by [name of auditing firm], an independent public accounting firm, as stated in their report dated March XX, 20XX.

ABC Depository Institution

_____

John Doe, Chief Executive Officer
Date: _____

_____

Jane Doe, Chief Financial Officer
Date: _____

(b) Statement Made at Insured Depository Institution Level—One or More Material Weaknesses

To: The Board of Directors and Audit Committee, ABC Depository Institution

Re: Management's Assessment of Internal Control Over Financial Reporting

ABC Depository Institution's (the ''Institution'') internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, including those prepared for regulatory reporting purposes [specify the regulatory reports]. The Institution's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Institution; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Institution are being made only in accordance with authorizations of management and directors of the Institution; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Institution's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Management assessed the effectiveness of the Institution's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework. Because of the material weakness (or weaknesses) noted below, management determined that the Institution's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], was not effective as of December 31, 20XX.

[Identify and describe the material weakness or weaknesses.]

Management's assessment of the effectiveness of internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, has been audited by [name of auditing firm], an independent public accounting firm, as stated in their report dated March XX, 20XX.

ABC Depository Institution

_____

John Doe, Chief Executive Officer
Date: _____

_____

Jane Doe, Chief Financial Officer
Date: _____

(c) Statement Made at Holding Company Level—No Material Weaknesses

To: The Board of Directors and Audit Committee, BCD Holding Company

Re: Management's Assessment of Internal Control Over Financial Reporting

BCD Holding Company's (the ''Company'') internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, including those prepared for regulatory reporting purposes [specify the regulatory reports]. The Company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework. Based on that assessment, management concluded that, as of December 31, 20XX, the Company's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], is effective based on the criteria established in Internal Control—Integrated Framework. The following subsidiary institutions of the Company that are subject to Part 363 are included in the scope of this assessment of internal control over financial reporting: [Identify the subsidiary institutions.]

Management's assessment of the effectiveness of internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, has been audited by [name of auditing firm], an independent public accounting firm, as stated in their report dated March XX, 20XX.

BCD Holding Company

_____

John Doe, Chief Executive Officer
Date: _____

_____

Jane Doe, Chief Financial Officer
Date: _____

(d) Statement Made at Holding Company Level—One or More Material Weaknesses

To: The Board of Directors and Audit Committee, BCD Holding Company

Re: Management's Assessment of Internal Control Over Financial Reporting

BCD Holding Company's (the ''Company'') internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, including those prepared for regulatory reporting purposes [specify the regulatory reports]. The Company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United

States of America, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework. Because of the material weakness (or weaknesses) noted below, management determined that the Company's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], was not effective as of December 31, 20XX. The following subsidiary institutions of the Company that are subject to Part 363 are included in the scope of this assessment of internal control over financial reporting: [Identify the subsidiary institutions.]

[Identify and describe the material weakness or weaknesses.]

Management's assessment of the effectiveness of internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, has been audited by [name of auditing firm], an independent public accounting firm, as stated in their report dated March XX, 20XX.

BCD Holding Company

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John Doe, Chief Executive Officer
Date: _____

_____

Jane Doe, Chief Financial Officer
Date: _____

6. *Illustrative Management Report—Combined Statement of Management's Responsibilities, Management's Assessment of Compliance with Laws and Regulations, and Management's Assessment of the Effectiveness of Internal Control Over Financial Reporting,* if applicable. The following illustrative management reports satisfy the requirements of §§ 363.2(b)(1), (2), and (3).

(a) Management Report Made at Insured Depository Institution Level—Compliance with Laws and Regulations and No Material Weaknesses in Internal Control Over Financial Reporting

To: The Board of Directors and Audit Committee, ABC Depository Institution
Re: Management Report

Statement of Management's Responsibilities

The management of ABC Depository Institution (the ''Institution'') is responsible for preparing the Institution's annual financial statements in accordance with generally accepted accounting principles; for establishing and maintaining an adequate internal control structure and procedures for financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions]; and for complying with laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable].

Management's Assessment of Compliance With Laws and Regulations

Management of ABC Depository Institution (the ''Institution'') has assessed the Institution's compliance with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX. Based upon its assessment, management has concluded that the Institution complied with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency (specify the appropriate federal banking agency, if applicable) during the fiscal year that ended on December 31, 20XX.

Management's Assessment of Internal Control Over Financial Reporting

ABC Depository Institution's (the ''Institution'') internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, including those prepared for regulatory reporting purposes [specify the regulatory reports]. The Institution's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Institution; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Institution are being made only in accordance with authorizations of management and directors of the Institution; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Institution's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Management assessed the effectiveness of the Institution's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework. Based on that assessment, management concluded that, as of December 31, 20XX, the Institution's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], is effective based on the criteria established in Internal Control—Integrated Framework.

Management's assessment of the effectiveness of internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, has been audited by [name of auditing firm], an independent public accounting firm, as stated in their report dated March XX, 20XX.

ABC Depository Institution

_____

John Doe, Chief Executive Officer
Date: _____

_____

Jane Doe, Chief Financial Officer
Date: _____

(b) Management Report Made at Holding Company Level—Compliance with Laws and Regulations and No Material Weaknesses in Internal Control Over Financial Reporting

To: The Board of Directors and Audit Committee, BCD Holding Company
Re: Management Report

Statement of Management's Responsibilities

The management of BCD Holding Company (the ''Company'') is responsible for preparing the Company's annual financial statements in accordance with generally accepted accounting principles; for establishing and maintaining an adequate internal control structure and procedures for financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions]; and for complying with laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate

federal banking agency, if applicable]. The following subsidiary institutions of the Company that are subject to Part 363 are included in the scope of this management report, management's assessment of compliance with laws and regulations, and management's assessment of internal control over financial reporting: [Identify the subsidiary institutions.]

Management's Assessment of Compliance With Laws and Regulations

Management of BCD Holding Company (the ''Company'') has assessed the Company's compliance with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify the appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX. Based upon its assessment, management has concluded that the Company complied with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency [specify appropriate federal banking agency, if applicable] during the fiscal year that ended on December 31, 20XX.

Management's Assessment of Internal Control Over Financial Reporting

BCD Holding Company's (the ''Company'') internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, including those prepared for regulatory reporting purposes [specify the regulatory reports]. The Company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework. Based on that assessment, management concluded that, as of December 31, 20XX, the Company's internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], is effective based on the criteria established in Internal Control—Integrated Framework.

Management's assessment of the effectiveness of internal control over financial reporting, including controls over the preparation of regulatory financial statements in accordance with the instructions for regulatory reporting [specify the regulatory reporting instructions], as of December 31, 20XX, has been audited by [name of auditing firm], an independent public accounting firm, as stated in their report dated March XX, 20XX.

BCD Holding Company

_____

John Doe, Chief Executive Officer
Date: _____

_____

Jane Doe, Chief Financial Officer
Date: _____

7. *Illustrative Cover Letter—Compliance by Holding Company Subsidiaries.* The following illustrative cover letter satisfies the requirements of guideline 3, *Compliance by Holding Company Subsidiaries,* of Appendix A to part 363.

To: (Appropriate FDIC Regional or Area Office) Division of Supervision and Consumer Protection, FDIC, and (Appropriate District or Regional Office of the Primary Federal Regulator(s), if not the FDIC), and (Appropriate State Bank Supervisor(s), if applicable)

Dear [Insert addressees]:

BCD Holding Company (the ''Company'') is filing two copies of the Part 363 Annual Report for the fiscal year ended December 31, 20XX, on behalf of its insured depository institution subsidiaries listed in the chart below that are subject to Part 363. The Part 363 Annual Report contains audited comparative annual financial statements, the independent public accountant's report on the audited financial statements, management's statement of responsibilities, management's assessment of compliance with laws and regulations, and [if applicable] management's assessment of and the independent public accountant's attestation report on internal controls over financial reporting. The chart below also indicates the level (institution or holding company) at which the requirements of Part 363 are being satisfied. The Company's insured depository institution subsidiary that complies with all of the Part 363 annual reporting requirements at the institution level has filed [or will file] its Part 363 Annual Report separately.

Institutions subject to part 363	Audited financial statements	Management's statement of responsibilities	Management's assessment of compliance with laws and regulations	Management's internal control assessment	Independent auditor's internal control attestation report
ABC Depository Institution.	HC Level	HC Level	HC Level	HC Level	HC Level.
DEF Depository Institution.	HC Level	Institution Level	Institution Level	Institution Level	Institution Level.

If you have any questions regarding the annual report [or reports] of the Company's insured depository institution subsidiaries subject to part 363 or if you need any further information, you may contact me at 987–654–3210.

BCD Holding Company

Date: _____

[Insert officer's name and title.]

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of October, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–21168 Filed 11–1–07; 8:45 am]

BILLING CODE 6714–01–P

Federal Register

Friday,
November 2, 2007

Part III

Environmental Protection Agency

40 CFR Part 52

Federal Implementation Plans for the Clean Air Interstate Rule: Automatic Withdrawal Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–0AR–2007–0510; FRL–8485–7]

Federal Implementation Plans for the Clean Air Interstate Rule: Automatic Withdrawal Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of a full State implementation plan (SIP) revision meeting the CAIR requirements. All CAIR States are required to revise their SIPs to include control measures to reduce the emissions of nitrogen oxides (NO_X) and/or sulfur dioxide (SO_2). The EPA issued the CAIR FIPs on April 28, 2006 as a backstop to implement the CAIR in each CAIR State until that State has an EPA-approved CAIR SIP in place to achieve the required reductions. In the FIP rulemaking, EPA stated it would withdraw the FIPs in a State in coordination with the approval of the CAIR SIP for that State.

In this action EPA makes the FIP withdrawal in a State automatic upon approval of the State's full CAIR SIP and to the extent of that approval. EPA believes it is appropriate for the FIP withdrawal to be automatic because to the extent EPA approves the State's full CAIR SIP, this corrects that deficiency that provided the basis for EPA's promulgation of the FIPs in that State.

DATES: The direct final rule is effective on January 16, 2008 without further notice, unless EPA receives adverse comment by December 17, 2007. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing by November 13, 2007, EPA will hold a public hearing on November 19, 2007 in Research Triangle Park, North Carolina.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0510, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2007–0510.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2007–0510.
- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2007–0510, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2007–0510, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room 3334; Washington, DC. 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–HQ–OAR–2007–0510. 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 *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 *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 and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Rulemaking actions related to the CAIR and the CAIR FIPs are also available at the EPA's CAIR Web site at *http://www.epa.gov/cair.*

FOR FURTHER INFORMATION CONTACT: Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, mail code C539–04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919–541–3347; fax number: 919–541–0824; e-mail address: *oldham.carla@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

I. Why Is EPA Using a Direct Final Rule?
II. Does This Action Apply to Me?
III. What Should I Consider As I Prepare My Comments?
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VII. What Is This Direct Final Rule?
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. Under this rule, the CAIR FIPs in a given State will be automatically withdrawn when, and to the extent, EPA approves a full CAIR SIP for that State. The FIP will not be withdrawn until the State's full CAIR SIP is effective. EPA's authority to promulgate the CAIR FIPs was based on EPA's prior findings that the existing SIPs did not adequately address interstate transport (71 FR 25328, 25338; April 28, 2006). To the extent the full CAIR SIP is approved for a given State, this corrects this deficiency and thus eliminates the basis for the FIPs for that State. Therefore, EPA believes that, following the approval of the full CAIR SIP, the Agency must withdraw the FIPs to the extent of the approval. Further, in the rulemaking promulgating the CAIR FIPs, EPA provided public notice that the withdrawal of the FIPs would be a necessary consequence of the SIP approval. Id. at 25340. Nonetheless, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule for this FIP withdrawal final rule action if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting on that parallel proposal must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

This action does not impose any control requirements. It amends the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State upon the effective date of EPA's approval of the CAIR SIP for the State. EPA promulgated the CAIR FIPs on April 28, 2006 (71 FR 25328). Categories and entities potentially regulated by the CAIR FIPs include the following:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the CAIR FIPs. To determine whether your facility is affected by the CAIR FIPs, you should examine the definitions and applicability criteria in 40 CFR 97.102, 97.104, 97.105, 97.202, 97.204, 97.205, 97.302, 97.304, and 97.305. If you have any questions regarding the applicability of the CAIR FIPs to a particular entity, consult the person listed in the preceding section under **FOR FURTHER INFORMATION CONTACT**.

III. What Should I Consider as I Prepare My Comments?

A. Submitting CBI

Do not submit this information to EPA through *www.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.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. What Are the Details for the Potential Public Hearing?

If anyone contacts EPA by November 13, 2007, requesting to speak at a public hearing on this action, EPA will hold a public hearing on November 19, 2007 in Research Triangle Park, North Carolina. The EPA will not hold a hearing if one is not requested. Please check EPA's Web page at *www.epa.gov/cair* on November 14, 2007 for the announcement of whether the hearing will be held.

If there is a public hearing, it will be held at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina, 27709; the room number will be announced on the CAIR Web site at *www.epa.gov/cair.* Because this is a U.S. government facility, everyone planning to attend the public hearing, if one is held, should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. If held, the public hearing will begin at 10 a.m. and continue until 5 p.m., if necessary, depending on the number of speakers. The EPA may end the hearing early if all registered speakers have had an opportunity to speak, but no earlier than 2 p.m. Persons wishing to present oral testimony that have not made arrangements in advance should register by 2 p.m. the day of the

hearing. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD–ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket.

If you want to request a hearing and present oral testimony at the hearing, you should notify, on or before November 13, 2007, Pam Long, EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504–03, Research Triangle Park, NC 27711, telephone (919) 541–0641, e-mail *long.pam@epa.gov.* The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written comment by the close of the comment period. Written comments should be submitted to Docket ID No. EPA–HQ–OAR 2007–0510 at the addresses given above for submittal of comments. If a hearing is held, the hearing schedule, including the list of speakers, will be posted on EPA's Web page at *www.epa.gov/cair.* A verbatim transcript of the hearing, if held, and written comments will be made available for copying during normal working hours at the EPA Docket Center address given above for inspection of documents.

V. Availability of Related Information

The official record for this rulemaking, as well as the public version, has been established under Docket ID No. EPA–HQ–OAR–2007–0510 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address provided in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemaking actions and associated documents are located at *www.epa.gov/cair.*

The docket for the rulemaking that promulgated the CAIR FIPs Rule is EPA–HQ–OAR–2004–0076. The rulemaking docket for the related CAIR (full title, ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone'') is EPA–HQ–OAR–2003–0053. The CAIR FIPs and the CAIR **Federal Register** rulemaking actions and associated documents are also located at *http://www.epa.gov/cair.*

VI. What Is the Background for This Action?

In a final rule published on April 25, 2005 (70 FR 21147), effective May 25, 2005, EPA made national findings that States had failed to submit SIPs required under section 110(a)(2)(D)(i) of the CAA to address interstate transport with respect to the $PM_{2.5}$ and 8-hour ozone NAAQS. These SIPs were due in July 2000, 3 years after the promulgation of the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. The national findings started a 2-year clock for EPA to promulgate FIPs to address the requirements of section 110(a)(2)(D)(i) in all the States. Under section 110(c)(1), EPA may issue a FIP for any such State any time after such findings are made and must do so unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On May 12, 2005 (70 FR 25162), EPA issued the CAIR, in which it determined that emissions from 28 States and the District of Columbia (collectively, CAIR States) are contributing significantly to nonattainment of the fine particle ($PM_{2.5}$) and/or 8-hour ozone national ambient air quality standards (NAAQS) in downwind States. The CAIR also determined the levels of NO_X and SO_2 emissions reduction requirements necessary for CAIR-affected States to eliminate their significant contribution to downwind nonattainment of the 8-hour ozone and $PM_{2.5}$ NAAQS. (*See also* CAIR revisions on April 28, 2006; 71 FR 25328 and December 13, 2006; 71 FR 74792.) NO_X emissions are precursors to 8-hour and $PM_{2.5}$; SO_2 emissions are precursors to $PM_{2.5}$. All CAIR States were required to submit their SIPs to satisfy the CAIR requirements by September 11, 2006. For States subject to the CAIR requirements, an approved CAIR SIP will satisfy, to the extent it is approved, the section 110(a)(2)(D)(i) requirements discussed in the April 25, 2005 findings action.

In a final rule published on April 28, 2006 (71 FR 25328), EPA promulgated FIPs as a backstop to implement the CAIR requirements in all CAIR States. As the control requirement for the FIPs, EPA adopted the model trading rules for EGUs that EPA provided in CAIR as a control option for States, with minor changes to account for Federal rather than State implementation. The FIPs will regulate EGUs in the affected States and achieve the emissions reduction requirements established by the CAIR until States have EPA-approved SIPs to achieve the reductions. In the FIP preamble, EPA stated it would withdraw the FIPs in a State in coordination with the approval of the CAIR SIP for that State. To the extent EPA approves a full CAIR SIP for a State, this eliminates the basis for CAIR FIP for the State, which EPA promulgated as a result of the April 25, 2005 findings.

In promulgating the FIPs, EPA explained that the FIPs do not limit the options available to States to meet the requirements of the CAIR. EPA explained that it intended to avoid taking any steps to implement FIP requirements that could impact a State's ability to regulate their sources in a different manner until a year after the CAIR SIP submission deadline (71 FR 25330–25331). EPA further explained that States could replace the FIPs requirements at a later time.

The CAIR FIPs also provide that States may submit ''abbreviated'' SIP revisions to replace or supplement specific elements of the FIPs, leaving the remainder of the overall FIPs in place, rather than submitting full CAIR SIP revisions that replace the FIPs. The abbreviated SIP revisions, when approved, will automatically replace or supplement the corresponding CAIR FIP provisions. (*See* 71 FR at 25345–25346 for further details.) The automatic withdrawal provisions of this rule only apply to EPA approval of full CAIR SIPs. This rule does not affect the interaction between the abbreviated CAIR SIP provisions and the CAIR FIPs (which remain in place following approval of an abbreviated SIP).

VII. What Is This Direct Final Rule?

In this direct final rule, EPA is revising the CAIR FIPs to provide that the FIPs will be automatically withdrawn in a State upon the effective date of EPA's approval of the State's full CAIR SIP and to the extent of that approval. If EPA only partially approves the State's full CAIR SIP submittal, then the FIP will be automatically withdrawn only to the extent of the partial approval. If EPA conditionally approves a full CAIR SIP, this automatic withdrawal provision will have no impact on the FIP, which will remain in place pending further action by EPA. If necessary, in any action approving a full CAIR SIP, EPA will provide additional details regarding the effect of the approval action on the status of the FIPs in that State.

One scenario under which EPA might partially approve and partially disapprove a SIP involves full CAIR SIPs on which EPA takes final action after EPA has already begun allocating NO_X allowances under the FIP. For example, if the State submits a SIP that adopts the model cap-and-trade programs for EGUs and EPA takes final

action on the SIP after EPA has allocated NO_X allowances for 2009 under the FIP, but before it has allocated any other allowances, EPA likely would disapprove the portions of the SIP relating to the allocation of 2009 NO_X allowances. The disapproval of the 2009 NO_X allocations would be necessary to prevent excess and duplicative NO_X allowances from entering the trading program. (See Section VI.F.1. of the CAIR FIPs Rule for the schedule for recording NO_X allocations in sources' accounts (71 FR 25352))

Under this scenario, because EPA would disapprove the portions of the full CAIR SIP relating to the allocation of 2009 NO_X allowances, the corresponding portions of the FIP providing EPA with authority to allocate 2009 NO_X allowances (including the authority to allocate NO_X allowances from the new unit set-aside, which would not be allocated by EPA until early 2009) would remain in place. However, EPA would approve the remainder of the SIP if it were found to be adequate, and thus the remainder of the FIP would be automatically withdrawn. There would be no penalties or negative consequences for the State associated with this partial SIP disapproval, and the State would not need to take any further corrective SIP action.

EPA does not anticipate conditionally approving any full CAIR SIPs. However, should EPA do so, EPA will address the impact of the conditional approval on the status of the CAIR FIPs in that State at that time. At this time, EPA is not proposing to automatically withdraw the FIP for a State based on conditional approval of a SIP for that State because a conditional approval carries the risk that it will convert to a disapproval in 1 year if the State does not address the specified conditions by that time.

The EPA believes it is appropriate to make the CAIR FIP withdrawal automatic in a State upon the effective date of the approval of the State's full CAIR SIP because once EPA approves a State's full CAIR SIP, EPA no longer has authority for the CAIR FIP in that State to the extent of that approval. Once the full CAIR SIP is effective and sources in the State are subject to the SIP, EPA's withdrawal of the appropriate portions of the CAIR FIPs has no practical consequences. Further, making the FIP withdrawal automatic upon full CAIR SIP approval will provide immediate clarity to affected sources as to their control requirements and conserve Agency resources that would otherwise be needed to conduct numerous nondiscretionary, noncontroversial FIP withdrawal rulemakings.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action amends the CAIR FIPs to provide for automatic withdrawal of the CAIR FIPs in a State once the State's CAIR SIP is in place. EPA believes that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requirements of the existing CAIR FIPs rule are satisfied through the Information Collection Request (ICR) (EPA ICR number 2152.02; OMB control number 2060–0570) submitted to the OMB for review and approval as part of the CAIR (70 FR 25162–25405) and approved by the OMB in September 2005. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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; 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.

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business ''as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201;'' (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule does not impose new requirements on any entities, but instead provides for the automatic withdrawal of the CAIR FIPs in certain circumstances. Thus, it does not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may

significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector; but would provide automatic withdrawal of the CAIR FIPs in certain circumstances. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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 final rule does not have federalism implications. It will not 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. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), 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.'' This direct final rule does not have tribal implications, as specified in Executive Order 13175 because it imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. It will neither increase nor decrease environmental protection.

K. 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 the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 16, 2008.

L. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District

of Columbia Circuit on or before January 2, 2008. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 17, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A—General Provisions

■ 2. Section 52.35 is revised to read as follows:

§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of nitrogen oxides?

(a)(1) The Federal CAIR NO_X Annual Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO_X). Each State that is described in § 51.123(c)(1) and (2) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. The provisions of subparts AA through II of part 97 of this chapter, regarding the CAIR NO_X Annual Trading Program, apply to the sources in each of these States that has not promulgated a SIP approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to the sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The Federal CAIR NO_X Ozone Season Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to emissions of nitrogen oxides (NO_X) during the ozone season, as defined in § 97.302 of this chapter. Each State that is described in § 51.123(c)(1) and (3) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 8-hour ozone NAAQS. The provisions of subparts AAAA through IIII of part 97 of this chapter, regarding the CAIR NO_X Ozone Season Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

(c) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§ 51.123 and 51.125 of this chapter.

(d)(1) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123(o) of this chapter are: [STATE NAME].

(2) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123(aa) of this chapter, are: [STATE NAME].

■ 3. Section 52.36 is revised to read as follows:

§ 52.36 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of sulfur dioxide?

(a) The Federal CAIR SO2 Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of sulfur dioxide (SO_2). Each State that is described in § 51.124(c) of this chapter is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. The provisions of subparts AAA through III of part 97 of this chapter, regarding the CAIR SO_2 Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

(b) The provisions of this section do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part or the obligations of States under the requirements of §§ 51.124 and 51.125 of this chapter.

(c) The States with SIPs approved by the Administrator as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124(o) of this chapter are: [STATE NAME]

Subpart B—Alabama

■ 4. Section 52.54 is revised to read as follows:

§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Alabama and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Alabama State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Alabama and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Alabama State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 5. Section 52.55 is revised to read as follows:

§ 52.55 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Alabama and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Alabama State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart E—Arkansas

■ 6. Section 52.184 is revised to read as follows:

§ 52.184 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each NO_X source located within the State of Arkansas and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Arkansas State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

(b) [Reserved]

Subpart H—Connecticut

■ 7. Section 52.386 is revised to read as follows:

§ 52.386 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each NO_X source located within the State of Connecticut and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Connecticut State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

(b) [Reserved]

Subpart I—Delaware

■ 8. Section 52.440 is revised to read as follows:

§ 52.440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Delaware and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Delaware State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Delaware and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Delaware State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 9. Section 52.441 is revised to read as follows:

§ 52.441 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Delaware and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Delaware State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart J—District of Columbia

■ 10. Section 52.484 is revised to read as follows:

§ 52.484 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the District of Columbia and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the District of Columbia State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the District of Columbia's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the District of Columbia for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the District of Columbia and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the District of Columbia State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the District of Columbia's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the District of Columbia for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 11. Section 52.485 is revised to read as follows:

§ 52.485 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the District of Columbia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the District of Columbia State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart K—Florida

■ 12. Section 52.540 is revised to read as follows:

§ 52.540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Florida and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Florida State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Florida and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Florida State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 13. Section 52.541 is revised to read as follows:

§ 52.541 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Florida and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Florida State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart L—Georgia

■ 14. Section 52.584 is revised to read as follows:

§ 52.584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Georgia and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Georgia State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b) [Reserved]

■ 15. Section 52.585 is revised to read as follows:

§ 52.585 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Georgia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Georgia State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart O—Illinois

■ 16. Section 52.745 is revised to read as follows:

§ 52.745 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Illinois and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Illinois State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the

Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Illinois and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Illinois State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 17. Section 52.746 is revised to read as follows:

§ 52.746 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Illinois and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Illinois State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart P—Indiana

■ 18. Section 52.789 is revised to read as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Indiana and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Indiana State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Indiana and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Indiana State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 19. Section 52.790 is revised to read as follows:

§ 52.790 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Indiana and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Indiana State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart Q—Iowa

■ 20. Section 52.840 is revised to read as follows:

§ 52.840 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Iowa and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Iowa State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the

Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Iowa and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Iowa State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 21. Section 52.841 is revised to read as follows:

§ 52.841 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Iowa and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Iowa State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart S—Kentucky

■ 22. Section 52.940 is revised to read as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Kentucky and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Kentucky State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Kentucky and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Kentucky State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 23. Section 52.941 is revised to read as follows:

§ 52.941 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Kentucky and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Kentucky State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart T—Louisiana

■ 24. Section 52.984 is revised to read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Louisiana and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Louisiana State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the

State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Louisiana and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Louisiana State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 25. Section 52.985 is revised to read as follows:

§ 52.985 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Louisiana and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Louisiana State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart V—Maryland

■ 26. Section 52.1084 is revised to read as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Maryland and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Maryland State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Maryland and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Maryland State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 27. Section 52.1085 is revised to read as follows:

§ 52.1085 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Maryland and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Maryland State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart W—Massachusetts

■ 28. Section 52.1140 is revised to read as follows:

§ 52.1140 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each NO_X source located within the State of Massachusetts and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Massachusetts State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the

time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

(b) [Reserved]

Subpart X—Michigan

■ 29. Section 52.1186 is revised to read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Michigan and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Michigan State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Michigan and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Michigan State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 30. Section 52.1187 is revised to read as follows:

§ 52.1187 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Michigan and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Michigan State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart Y—Minnesota

■ 31. Section 52.1240 is revised to read as follows:

§ 52.1240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Minnesota and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Minnesota State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

■ 32. Section 52.1241 is revised to read as follows:

§ 52.1241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Minnesota and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Minnesota State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart Z—Mississippi

■ 33. Section 52.1284 is revised to read as follows:

§ 52.1284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Mississippi and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an

approval by the Administrator of a revision to the Mississippi State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Mississippi and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Mississippi State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 34. Section 52.1285 is revised to read as follows:

§ 52.1285 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Mississippi and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Mississippi State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart AA—Missouri

■ 35. Section 52.1341 is revised to read as follows:

§ 52.1341 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Missouri and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Missouri State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Missouri and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Missouri State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 36. Section 52.1342 is revised to read as follows:

§ 52.1342 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Missouri and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Missouri State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart FF—New Jersey

■ 37. Section 52.1584 is revised to read as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of New Jersey and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the

promulgation of an approval by the Administrator of a revision to the New Jersey State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of New Jersey and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the New Jersey State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 38. Section 52.1585 is revised to read as follows:

§ 52.1585 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of New Jersey and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the New Jersey State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart HH—New York

■ 39. Section 52.1684 is revised to read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of New York and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the New York State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of New York and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the New York State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 40. Section 52.1685 is revised to read as follows:

§ 52.1685 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of New York and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the New York State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart II—North Carolina

■ 41. Section 52.1784 is revised to read as follows:

§ 52.1784 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of North Carolina and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the

Administrator of a revision to the North Carolina State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of North Carolina and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the North Carolina State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 42. Section 52.1785 is revised to read as follows:

§ 52.1785 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of North Carolina and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the North Carolina State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart KK—Ohio

■ 43. Section 52.1891 is revised to read as follows:

§ 52.1891 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Ohio and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Ohio State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Ohio and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Ohio State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 44. Section 52.1892 is revised to read as follows:

§ 52.1892 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Ohio and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Ohio State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart NN—Pennsylvania

■ 45. Section 52.2040 is revised to read as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Pennsylvania and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter

will be eliminated by the promulgation of an approval by the Administrator of a revision to the Pennsylvania State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Pennsylvania and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Pennsylvania State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 46. Section 52.2041 is revised to read as follows:

§ 52.2041 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Pennsylvania and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Pennsylvania State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart PP—South Carolina

■ 47. Section 52.2140 is revised to read as follows:

§ 52.2140 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of South Carolina and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the South Carolina State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of South Carolina and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the South Carolina State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 48. Section 52.2141 is revised to read as follows:

§ 52.2141 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of South Carolina and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the South Carolina State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart RR—Tennessee

■ 49. Section 52.2240 is revised to read as follows:

§ 52.2240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Tennessee and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this

chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Tennessee State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Tennessee and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Tennessee State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 50. Section 52.2241 is revised to read as follows:

§ 52.2241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Tennessee and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Tennessee State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart SS—Texas

■ 51. Section 52.2283 is revised to read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Texas and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Texas State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b) [Reserved]

■ 52. Section 52.2284 is revised to read as follows:

§ 52.2284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Texas and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Texas State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart VV—Virginia

■ 53. Section 52.2440 is revised to read as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Virginia and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Virginia State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Virginia and for which requirements are

set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Virginia State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 54. Section 52.2441 is revised to read as follows:

§ 52.2441 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Virginia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Virginia State Implementation Plan as meeting the requirements of CAIR for PM2.5 relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart XX—West Virginia

■ 55. Section 52.2540 is revised to read as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of West Virginia and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the West Virginia State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of West Virginia and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the West Virginia State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 56. Section 52.2541 is revised to read as follows:

§ 52.2541 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of West Virginia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the West Virginia State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

Subpart YY—Wisconsin

■ 57. Section 52.2587 is revised to read as follows:

§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source located within the State of Wisconsin and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in subparts AA through II of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Wisconsin State Implementation Plan (SIP) as meeting the requirements of CAIR for $PM_{2.5}$ relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X allowances for those years.

(b)(1) The owner and operator of each NO_X source located within the State of Wisconsin and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in subparts AAAA through IIII of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Wisconsin State Implementation Plan (SIP) as meeting the requirements of CAIR for ozone relating to NO_X under § 51.123 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated CAIR NO_X Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO_X Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP provision that provides for the allocation of the remaining CAIR NO_X Ozone Season allowances for those years.

■ 58. Section 52.2588 is revised to read as follows:

§ 52.2588 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner and operator of each SO_2 source located within the State of Wisconsin and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in subparts AAA through III of part 97 of this chapter must comply with such applicable requirements. The obligation to comply with these requirements in part 97 of this chapter will be eliminated by the promulgation of an approval by the Administrator of a revision to the Wisconsin State Implementation Plan as meeting the requirements of CAIR for $PM_{2.5}$ relating to SO_2 under § 51.124 of this chapter, except to the extent the Administrator's approval is partial or conditional or unless such approval is under § 51.124(r) of this chapter.

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Part IV

Federal Communications Commission

Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserved Prices, Upfront Payments and Other Procedures for Auctions 73 and 76; Notice

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 07–157; Report No. AUC–07–73–B (Auctions 73 and 76); DA 07–4171]

Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserved Prices, Upfront Payments and Other Procedures for Auctions 73 and 76

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of certain 700 MHz Band Licenses (Auctions 73 and 76). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for these auctions.

DATES: Applications to participate in 700 MHz Band Licenses Auctions 73 and 76 must be filed before 6 p.m. ET on December 3, 2007. Bidding for Auction No. 73 is scheduled to begin on January 24, 2008. Contingent subsequent bidding in Auction 76, if necessary, will begin on a date to be announced after Auction 73 has closed.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions Spectrum and Access Division: For legal questions: Scott Mackoul, Stephen Johnson or Howard Davenport at (202) 418–0660. For general auction questions: Lisa Stover at (717) 338–2868. Mobility Division: For service rule questions: Erin McGraft (legal), Keith Harper (engineering) and Denise Walter (licensing) at (202) 418–0620. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auctions 73 and 76 Procedures Public Notice* released on October 5, 2007. The complete text of the *Auctions 73 and 76 Procedures Public Notice,* including attachments, as well as related Commission documents are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. On October 19, 2007, a Public Notice was released announcing a change in the date of the bidders' seminar for Auctions 73 and 76 from November 19, 2007 to November 20, 2007. The *Auctions 73 and 76 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 07–4171 for the *Auctions 73 and 76 Procedures Public Notice.* The *Auctions 73 and 76 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/73/.*

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau (the Bureau) announces the procedures and minimum opening bid amounts for the upcoming auction of licenses for services in the 698-806 MHz band (700 MHz Band) scheduled to begin on January 24, 2008. This auction is designated as Auction 73. Auction 73 will offer 700 MHz Band licenses for initial bidding and the 700 MHz Band licenses may be offered in contingent subsequent bidding. In the event that any licenses are offered in contingent subsequent bidding, that event will be designated as Auction 76. On August 17, 2007, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureau released a public notice seeking comment on competitive bidding procedures for both the initial bidding and the contingent subsequent bidding for *700 MHz Band licenses.* Interested parties submitted 12 comments and 8 reply comments in response to the *700 MHz Auction Public Notice,* 72 FR 48272, August 23, 2007, as well as a number of *ex parte* communications.

2. In the *700 MHz Auction Public Notice,* the Bureau proposed to include all available, commercial 700 MHz Band licenses (1,099 licenses) for initial bidding in Auction 73 using the Commission's standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E block licenses and an auction design with hierarchical package bidding (HPB) for the C Block licenses. The *700 MHz Auction Public Notice* also proposed procedures for the contingent subsequent bidding, now designated Auction 76, on licenses for spectrum associated with any initially offered licenses for which the Auction 73 results do not satisfy applicable reserve prices. Based on the record and after considering comments provided in response to the *700 MHz Auction Public Notice,* the Bureau hereby announces the final procedures for Auctions 73 and Auction 76.

3. The *Auctions 73 and 76 Procedures Public Notice* provides, among other things, procedures for the following: (1) Anonymous bidding, to enhance competition by safeguarding against potential anti-competitive auction strategies; (2) package bidding, to enable bidders trying to combine multiple C Block licenses to place bids on packages of those licenses; (3) block-specific aggregate reserve prices, to help assure that the public recovers a portion of the value of the spectrum resource; and (4) prompt subsequent bidding in Auction 76, to offer licenses for relevant block(s) in the event Auction 73 results do not satisfy applicable reserve prices.

4. *Anonymous Bidding.* In the *700 MHz Second Report and Order,* 65 FR 17594, April, 4, 2000, the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or limited information) bidding procedures, regardless of any pre-auction measurement of likely auction competition. Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. Having proposed and sought comment on more detailed procedures for employing anonymous bidding for the upcoming auction, the Bureau now announces the anonymous bidding procedures.

5. *Package Bidding for C Block Licenses.* The Commission also determined in the *700 MHz Second Report and Order* that providing for package bidding for C Block licenses would serve the public interest. The Commission found that package bidding for these licenses should facilitate the entry of entities seeking to create a nationwide footprint and whose business plans require the economies of scale that only can be obtained with nationwide operation. At Commission direction, the Bureau previously proposed and sought comment on detailed procedures for implementing package bidding for the C Block licenses and not for licenses in the other blocks to be auctioned. In the *Auctions 73 and 76 Procedures Public Notice,* the Bureau detailed the process for package bidding for the C Block licenses.

6. *Block-Specific Aggregate Reserve Prices.* The Commission also decided to

provide for aggregate reserve prices for licenses authorizing the use of each block of the commercial 700 MHz Band yet to be licensed. The Commission concluded that, consistent with its statutory mandate, disclosed reserve prices would promote the recovery of a portion of the value of the public spectrum resource. The Commission directed the Bureau to adopt aggregate reserve prices reflecting the potential market value of this spectrum based on a variety of factors including, but not limited to, the characteristics of this band and the auction prices of other recently auctioned licenses, such as licenses for Advanced Wireless Services in the 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). Accordingly, the Bureau proposed and sought comment on the following block-specific aggregate reserve prices: Block A, $1.807380 billion; Block B, $1.374426 billion; Block C, $4.637854 billion; Block D, $1.330000 billion; Block E, $0.903690 billion. Further, the Bureau proposed that if the sum of the provisionally winning bids for the licenses in a block does not satisfy the relevant aggregate reserve price, none of the relevant licenses for the particular block will be assigned based on the auction results. In the *Auctions 73 and 76 Procedures Public Notice,* the Bureau adopted this proposal.

7. *Auction 76 Overview.* The Commission decided that, if licenses initially offered for the A, B, C, or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) for those licenses, the Commission promptly will offer alternative licenses for those blocks. More specifically, the Commission will offer licenses for the A, B, and E Blocks subject to alternative performance requirements. With respect to the C Block, the Commission will offer alternative licenses without the open platform conditions and based on different geographic areas and spectrum bandwidth. If the D Block license is not assigned because the auction results do not satisfy the D Block reserve price, the Commission may re-offer that license subject to the same rules or reconsider the applicable rules. For administrative purposes, the Bureau will designate as Auction 76 any subsequent bidding for alternative licenses for the A, B, C or E Blocks or for the D Block license that occurs because Auction 73 results for licenses initially offered for the relevant blocks do not satisfy the applicable aggregate reserve price(s). In the *Auctions 73 and 76 Procedures Public Notice,* the Bureau announced detailed procedures for conducting Auction 76, if necessary.

8. The Commission will conduct bidding in Auction 73 and any contingent subsequent bidding in Auction 76 for 700 MHz Band licenses as a single auction to the extent possible, given the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum and the related nature of the licenses being offered in Auctions 73 and 76. Thus, pursuant to the *700 MHz Second Report and Order,* the Bureau will permit only qualified bidders in the initial auction to participate in the contingent subsequent auction. To enable a prompt start to Auction 76 after Auction 73, applicants must select any licenses on which they may bid in Auction 76 by the deadline for filing their Auction 73 application. Applicants must select those licenses by submitting a separate abbreviated short-form application to participate in Auction 76. The abbreviated Auction 76 application must be filed together with the applicant's standard application for Auction 73, following procedures described in the *Auctions 73 and 76 Procedures Public Notice.* In the event that Auction 76 takes place, bidder identity and other information on the applicant's completed Auction 73 short-form application will be combined with the licenses selected in the abbreviated Auction 76 application to create the applicant's Auction 76 application. This process will minimize the time period between auctions by eliminating any need for applicants to take time following Auction 73 to file new applications or select additional licenses, and for the Commission to review newly-filed short-form applications. Applicants in Auction 76, however, will have an opportunity after Auction 73 to obtain additional eligibility for any licenses offered in Auction 76 by supplementing their upfront monies on deposit with the Commission pursuant to the procedures as provided for in the *700 MHz Second Report and Order.*

9. The Bureau also will use the Auction 73 design in Auction 76, including an aggregate reserve price for each block that matches the applicable initial reserve price. In the event that alternative licenses for the C Block are offered for Blocks C1 and C2, the Bureau will conduct package bidding for the C2 Block only, using the pre-determined packages. Alternative licenses for Blocks C1 and C2 will be subject to reserve prices. There will be a joint aggregate reserve price equal to the initial auction C Block aggregate reserve price, and separate aggregate reserve prices for the C1 and C2 Blocks that add to the joint aggregate reserve price. Licenses in both blocks will be assigned if the joint aggregate reserve price is met. If the joint aggregate reserve price is not met but one of the block-specific reserve prices is met, licenses in the block for which the reserve price is met will be assigned. Licenses in the other block will not be assigned. This will assure the aggregate reserve price in the initial auction continues to apply while maximizing the opportunity for licenses for either Block C1 or C2 to be assigned.

i. Background of Proceeding

10. The Commission is offering the licenses in Auction 73 consistent with the requirements of the Digital Television Transition and Public Safety Act of 2005 (DTV Act). Pursuant to the DTV Act the Commission must conduct the auction of licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008. A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52–53, 56–58, 60–62, and 65–67) and adjacent channels.

ii. Licenses To Be Offered in Auction 73

11. Auction 73 will offer a total of 1,099 licenses: 176 Economic Area (EA) licenses in each of the A and E Blocks, 734 Cellular Market Area (CMA) licenses in the B Block, 12 Regional Economic Area Grouping (REAG) licenses in the C Block, and one nationwide license, to be used as part of the 700 MHz Public/Private Partnership, in the D Block.

B. Rules and Disclaimers

i. Relevant Authority

12. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, part 1, of the CFR, including recent amendments and clarifications; rules relating to the 700 MHz Band contained in Title 47, part 27, of the CFR; rules relating to the public/private partnership applicable to the D Block contained in Title 47, part 90, of the CFR; and rules relating to applications, environment, practice and procedure contained in Title 47, part 1, of the CFR. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (terms) contained in the *Auctions 73 and 76 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of

Commission licensees. For example, among other Commission orders, prospective bidders should be familiar with the *700 MHz First Report and Order,* 65 FR 3139, January 20, 2000, and the *700 MHz Second Report and Order.*

13. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auctions 73 and 76.

ii. Prohibition of Collusion; Compliance With Antitrust Laws

14. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements 9 unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to § 1.2105(a)(2)(viii).

a. Entities Subject to Anti-Collusion Rule

15. The anti-collusion rule will apply to any applicants that submit short-form applications for Auctions 73 or 76 and select licenses in the same or overlapping CMAs, EAs, REAGs or the nationwide license in the D Block. For example, assume that one applicant applies for a REAG license and a second applicant applies for an EA license covering any area within that REAG. The two entities will have applied for licenses covering the same geographic areas and would be precluded from communicating with each other under the rule. The rule also applies where one applicant has selected a license in Auction 73 and another applicant selects a license in Auction 76 that covers any of the same geographic area. In addition, the rule precludes applicants that apply to bid for the nationwide license in the D Block, or all the licenses in any other block, from communicating with all other applicants. Thus, applicants that have applied for licenses covering the same markets (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.

16. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

17. Entities and parties subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where the anti-collusion rule views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs. The Bureau has not addressed situations where employees who do not qualify as the applicant, (e.g., are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. The Bureau notes that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing bidder without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.

b. Prohibition Applies Until Down Payment Deadline

18. Section 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. In recognition of the related nature of the initial auction and any contingent auction of alternative licenses, the Commission concluded in the *700 MHz Second Report and Order* that the provisions of the anti-collusion rule would continue to apply until the down payment deadline for the subsequent auction.

19. Some commenters argue that the Bureau should allow applicants to opt-out from the anti-collusion prohibition in the event Auction 76 is conducted. A commenter proposed that an applicant that has no intention to bid in the subsequent auction could inform the Commission of its intent in writing with a certification that its decision is not based on any discussion with other competing bidders of auction strategy or post-auction market structure. As one commenter acknowledges, changing the application of the rule in this way is beyond the Bureau's delegated authority and beyond the scope of this non-rulemaking proceeding and would require action by the Commission to reconsider its determination in the *700 MHz Second Report and Order*. Thus, the Bureau is unable to adopt the proposed opt-out certification procedure. If it is necessary to conduct Auction 76, the provisions of the anti-collusion rule will apply to all applicants until the down payment deadline, which will occur after the close of bidding on licenses offered in Auction 76.

c. Prohibited Communications

20. Prospective applicants for upcoming Auctions 73 and 76 and other parties that may be engaged in discussion with such prospective applicants are cautioned of the need to comply with the Commission's anti-collusion rule, § 1.2105(c). The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

21. The Commission remains vigilant about prohibited communications

taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

22. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential in both Auctions 73 and 76 at the time of disclosure may violate the anti-collusion rule. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auctions 73 and 76, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, an applicant's public statement of intent not to participate in Auction 76 bidding could also violate the rule.

23. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

24. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures for limited information. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

25. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants for licenses covering any of the same or overlapping geographic areas after the short-form filing deadline.

e. Anti-Collusion Certification

26. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachments D and E to the *Auctions 73 and 76 Procedures Public Notice*, each applicant certifies its compliance with § 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

f. Antitrust Laws

27. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other. Similarly, the Bureau has long reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

28. One commenter urges the Commission to adopt an auction rule that states that a bidder cannot release any bidding information to the public during the course of the auction, and provide notice that all parties remain subject to the antitrust laws. As another commenter points out, however, the

Commission has consistently provided such guidance in prior auctions. The Bureau does so again here: All parties remain subject to the antitrust laws.

g. Duty to Report Prohibited Communications

29. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately and in no case later than five business days after the communication occurs. The Commission recently clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.

30. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by § 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under § 1.2105(a)(2)(viii).

31. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

32. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

i. Additional Information Concerning Anti-Collusion Rule

33. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment I of the *Auctions 73 and 76 Procedures Public Notice*. These documents are available on the Commission's auction anti-collusion Web page.

iii. Protection of Incumbent Operations

34. A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52–53, 56–58, 60–62, and 65–67) and adjacent channels. In accordance with the Commission's rules, 700 MHz Band licensees must protect analog and digital TV incumbents from harmful interference through February 17, 2009, the end of the DTV transition period. After February 17, 2009, 700 MHz licensees must continue to operate in accordance with the Commission's rules to reduce the potential for interference to public reception of the signals of DTV broadcast stations transmitting on DTV Channel 51. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to some parts of their geographic license areas.

35. In the *700 MHz Second Report and Order*, the Commission grandfathered an incumbent guard band B Block licensee in Major Economic Areas (MEAs) 21 and 39 at 761–763 MHz and 791–793 MHz of the D Block. The new D Block licensee will be authorized on a secondary basis at 761–763 MHz and 791–793 MHz in these markets, and it may not cause interference to the primary operations of the grandfathered licensee. If the grandfathered licensee, or a successor or assignee, cancels either of the grandfathered licenses, or if either license cancels automatically, is terminated by the Commission, or expires, then the licensed geographic area will revert to the D Block licensee automatically.

a. International Coordination

36. Potential bidders seeking licenses for geographic areas that are near the Canadian or Mexican borders are subject to international agreements with Canada and Mexico. Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican television broadcast stations located in the border area. Unless otherwise modified by international treaty, licensees must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada. Further, until such time as existing agreements are replaced or modified to reflect the new uses, licensees in the band will be subject to existing agreements.

b. Quiet Zones

37. 700 MHz Band licensees must protect the radio quiet zones set forth in the Commission's rules. Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission's rules.

iv. Due Diligence

38. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which 700 MHz Band frequencies are occupied. Applicants and their investors should also understand that Commission rules and requirements place limitations on the ability of 700 MHz Band licensees to use this spectrum. There are a number of incumbent broadcast television licensees already licensed and operating in the band that will be subject to the upcoming auction. Geographic area licensees operating on the spectrum associated with Channels 52–53, 56–58, 60–62, and 65–67 must comply with the co-channel and the adjacent channel provision of § 27.60 of the Commission's rules. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. For example, bidders should become familiar with any petitions or other pleadings filed in response to the *700 MHz First Report and Order, 700 MHz Second Report and Order*, and any other orders that have been or may be released affecting the 700 MHz Band.

39. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of 700 MHz Band licenses. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in the 700 MHz Band subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

40. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of

bidding in Auction 73 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction, including any subsequent auction (if necessary). Participants in Auctions 73 and 76 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

41. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auctions 73 and 76. For example, bidders should note that petitions have been filed for reconsideration of certain decisions made in the *700 MHz First Report and Order* and the *700 MHz Second Report and Order*. In addition, applicants should be aware that the Commission has sought comment on a range of proposals concerning consumer education about the DTV transition, including the possible imposition of reporting requirements on winning bidders for 700 MHz band licenses. Of course, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auctions 73 and 76. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in Auctions 73 and 76.

42. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 73. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

43. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

44. Applicants may use the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at *http://www.fcc.gov/mb/cdbs.html*. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418–2662, or via e-mail at *cdbshelp@fcc.gov*.

45. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

46. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations.

v. Use of Integrated Spectrum Auction System

47. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 73 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty 21 whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with Auctions 73 and 76. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Fraud Alert

48. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 73 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060.

vii. Environmental Review Requirements

49. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility. The Commission's environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction 73 Start Date

50. Bidding in Auction 73 will begin on Thursday, January 24, 2008.

51. This change of the previously-announced start date for Auction 73 will provide interested parties with additional time after this announcement of competitive bidding procedures to develop business plans, assess market conditions, and evaluate the availability of equipment for new 700 MHz Band services.

52. Some commenters had sought a postponement of the previously-announced start date until January 25 or 28, 2008. Pursuant to the Congressional mandate, the Commission must conduct the auction of licenses for recovered analog spectrum in the 700 MHz Band by commencing the bidding not later than January 28, 2008. Starting the auction on the statutory deadline for commencing the auction, or one business day prior to the deadline would provide insufficient time to address unexpected matters that might arise just prior to the start of bidding.

53. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all licenses and packages will be conducted on each business day until bidding has stopped on all licenses and packages.

ii. Auction Title

54. The auction in which the 700 MHz Band licenses will initially be offered is designated as Auction 73—700 MHz Band. In the event that any licenses, including alternative licenses, are offered in contingent subsequent bidding, that will be designated as Auction 76.

iii. Bidding Methodology

55. The bidding methodology for Auction 73 will be simultaneous multiple round (SMR) bidding for the A, B, D, and E Block licenses and an auction design with hierarchical package bidding (HPB) for the C Block licenses. The Commission will conduct Auctions 73 and 76 over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iv. Pre-Auction Dates and Deadlines

56. The following dates and deadlines apply:

Auction Seminar	November 20, 2007.
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Opens	November 19, 2007; 12 noon ET.
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Deadline	December 3, 2007; prior to 6 p.m. ET.
Auction 73 Upfront Payments (via wire transfer)	December 28, 2007; 6 p.m. ET.
Mock Auction	January 18, 2008.
Auction 73 Begins	January 24, 2008.

57. If contingent subsequent bidding is necessary, the Bureau intends to announce the start date for Auction 76 and the deadline for additional upfront payments within five business days after the end of bidding in Auction 73. The Bureau expects that Auction 76 would begin within three weeks of that announcement.

v. Requirements for Participation in Auction 73 and 76

58. Those wishing to participate in Auction 73 and 76 (should any subsequent auction become necessary), must: (1) For Auction 73, submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, December 3, 2007, following the electronic filing procedures set forth in Attachment D to the *Auctions 73 and 76 Procedures Public Notice;* (2) for Auction 76, submit short-form applications (FCC Form 175) electronically prior to 6 p.m. ET, December 3, 2007, for each auction following the electronic filing procedures set forth in Attachments D and E to the *Auctions 73 and 76 Procedures Public Notice.* Bidding in Auction 76 is open only to applicants that qualify to participate in Auction 73, and that comply with all of the requirements for participating in Auction 76, including submitting a separate short-form application; (3) for Auction 73, submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, December 28, 2007, following the procedures and instructions set forth in Attachment F to the *Auctions 73 and 76 Procedures Public Notice;* (4) for Auction 76 (if necessary), submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the deadline to be announced following the end of bidding in Auction 73; and (5) comply with all provisions outlined in this Public Notice and applicable Commission rules.

D. Other Issues Raised by Commenters

59. Two commenters raised issues that are unrelated to those raised in the *700 MHz Auction Public Notice.* One commenter proposes that the Commission should require that all licenses offered in Auction 73 be made available to public safety personnel for priority use during critical emergencies. The commenter also suggests that such a requirement be considered in the event of a contingent auction, if any. Another commenter urges the Commission to require applicants to disclose on their short-form applications whether winning the licenses they have selected would cause their spectrum holdings to exceed 70 MHz of spectrum in the markets of the selected licenses. In the event that any applicants indicate that their spectrum holdings would exceed this amount, the commenter proposed that their short-form applications should be dismissed before the commencement of Auction 73. The commenter also requests that the Commission investigate alleged violations of the Commission's *ex parte* rules by a wireless company concerning policy on the open platform provisions for C Block licenses, and proposes excluding that company from Auction 73 as a possible sanction for violating the Commission's rules.

60. These issues are outside the scope of this non-rulemaking proceeding, which is confined to establishing competitive bidding procedures for Auction 73. The Bureau notes that some of these issues have been presented to the Commission in petitions for reconsideration of the *700 MHz Second Report and Order* and will be addressed in that proceeding.

II. Short-Form Application (FCC Form 175) Requirements

61. Entities seeking licenses available in Auction 73 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on December 3, 2007, following the procedures prescribed in Attachment D to the *Auctions 73 and 76 Procedures Public Notice.* Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing. For Auctions 73 and 76, applicants filing a short-form application for Auction 73 will remain subject to the Commission's anti-collusion rules through the

completion of Auction 76, if conducted. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment D to the *Auctions 73 and 76 Procedures Public Notice* carefully and should consult 26 the Commission's rules to ensure that all the information that is required under the Commission's rules is included with their short-form applications.

62. Entities seeking licenses that may be offered in Auction 76, if Auction 76 is conducted, must file electronically via the FCC Auction System prior to 6 p.m. ET on December 3, 2007 both a short-form application for Auction 73, following the procedures prescribed in Attachment D to the *Auctions 73 and 76 Procedures Public Notice*, and an abbreviated short-form application for Auction 76, following the procedures prescribed in Attachment E to the *Auctions 73 and 76 Procedures Public Notice*. Applicants filing short-form applications for both Auctions 73 and 76 are subject to the Commission's anti-collusion rules beginning on the deadline for filing both applications.

63. To streamline the application process, other than license selection requirements, all relevant information for the application to participate in Auction 76 must be submitted as part of the application to participate in Auction 73. The Auction 76 abbreviated application will request—and will accept—only information that the FCC Auction System requires in order to enable applicants to submit license selections for Auction 76. For example, applicants seeking to submit information regarding bidding agreements with respect to licenses offered in Auction 76 will not be able to access the bidding agreement screens that are usually part of the short-form application in the Auction 76 abbreviated application. Instead, such applicants must submit information regarding those agreements as part of their Auction 73 short-form application.

64. To comply with FCC Auction System requirements, however, applicants will be required to repeat some information submitted in their Auction 73 application, e.g., their FCC Registration Number (FRN), their name and address, certification of the form's contents, etc. As noted in the procedures for filing the abbreviated short-form application for Auction 76, applicants must provide the same information submitted in their application for Auction 73 as they provide in their Auction 76 application. Most importantly, if an entity wishes to submit a short-form application for Auction 76, it must do so using the same FRN that it uses for its short-form application for Auction 73. In addition, the same person must certify both applications, as the certification applies to information submitted in both applications.

65. An entity may not submit more than one short-form application for Auction 73. Similarly, an entity may not submit more than one short-form application for Auction 76. If a party submits multiple short-form applications for either Auction 73 or Auction 76, only one application for each will be accepted for filing.

66. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Preferences for Small Businesses and Others

i. Size Standards for Bidding Credits

67. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 73 and Auction 76, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows: (1) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid.

68. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

69. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application for Auction 73 to establish that it satisfies the applicable eligibility requirement. An applicant's disclosure of this information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required—and will not be able to—submit this information in their abbreviated Auction 76 application. Applicants claiming eligibility as a designated entity in Auction 73 and Auction 76 should review carefully the *CSEA/Part 1 Report and Order*, 71 FR 6992, February 10, 2006, the *Designated Entity Second Report and Order*, 71 FR 26245, May 5, 2006, and the *Order on Reconsideration of the Designated Entity Second Report and Order*, 71 FR 34272, June 14, 2006. In that connection, the Commission adopted rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order*. The Commission's rules regarding applicants seeking eligibility for designated entity benefits require the disclosure of: (1) All parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum; and (2) the gross revenues, separately and in the aggregate, of entities with which the applicant has an attributable material relationship, as defined in § 1.2110(b)(3)(iv)(B).

70. The Commission has adopted a narrow exemption from the attribution rule for the officers and directors of a rural telephone cooperative pursuant to which the gross revenues of the affiliates of the cooperative's officers and directors are not attributed to the applicant. An applicant (or controlling interest) seeking to claim this exemption must include in its short-form application a certification that it is validly organized under the most

closely applicable organizing statute for a cooperative, and that such organization is reflected in its articles of incorporation, bylaws, and/or other relevant organic documents. Applicants seeking to claim this exemption must meet all of the conditions specified in § 1.2110(b)(3)(iii) of the Commission's rules. Additional guidance on completing the FCC Form 175 to claim this exemption may be found in Attachment D to the *Auctions 73 and 76 Procedures Public Notice*.

ii. Tribal Lands Bidding Credit

71. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their FCC Form 175 short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their FCC Form 601 long-form applications.

iii. Installment Payments

72. Installment payment plans will not be available in Auction 73 or in Auction 76.

B. License Selection

73. An applicant must select the initially offered licenses on which it wants to bid individually or as part of a pre-defined package in Auction 73 from the Eligible Licenses list on its short-form application for Auction 73. An applicant interested in bidding on licenses in the contingent subsequent auction must select those licenses from the Eligible Licenses list on its short-form application for Auction 76. Applicants will be able to bid on pre-defined packages of initially offered C Block licenses and alternative C2 Block licenses, if offered in subsequent bidding, pursuant to the package bidding procedures, only if they have selected all the individual licenses that comprise the relevant package on their respective short-form applications.

74. To assist applicants in identifying licenses of interest that will be available in Auctions 73 and 76, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the Eligible Licenses list. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses.

75. Applicants will not be able to change their license selections for either Auction 73 or Auction 76 after the short-form application filing deadline. Applicants interested in participating in Auctions 73 and 76 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting FCC Form 175. The FCC Auction System will not accept bids from an applicant on individual licenses that the applicant has not selected on its FCC Form 175. In addition, the FCC Auction System will not accept bids from an applicant on a pre-defined hierarchical package unless the applicant selected on its FCC Form 175 all the individual licenses that comprise the package.

C. Disclosure of Bidding Arrangements

76. Applicants will be required to identify in their short-form application for Auction 73 all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned in Auctions 73 and 76, including any agreements relating to post-auction market structure. The agreements identified in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the 31 Commission conducts Auction 76. Accordingly, applicants are not required—and will not be able to—disclose bidding agreements in their abbreviated Auction 76 application.

77. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application to participate in Auction 73, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

78. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (1) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

79. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by § 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing the short-form application for Auction 73, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in § 1.2105 and 1.2112 of the Commission's rules. Each applicant is responsible for information submitted in its short-form application being complete and accurate. An applicant's disclosure of ownership information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required—and will not be able to—submit ownership disclosure information in their abbreviated Auction 76 application.

80. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an online FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 73 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate

as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

E. Bidding Credit Revenue Disclosures

81. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their short-form applications for Auction 73 the gross revenues of the preceding three years for each of the following: (1) The applicant; (2) its 33 affiliates; (3) its controlling interests; and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Applicants must also disclose the gross revenues of the entities with which they have attributable material relationships, as defined by the Commission's rules. Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member. An applicant's disclosure of bidding credit revenue information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required and will not be able to submit bidding credit revenue information in their abbreviated Auction 76 application.

82. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

83. Officers and directors of an applicant are also considered to have controlling interest in the applicant. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities; the affiliates of those principals or entities; the applicant and its affiliates; and any parties having an attributable material relationship with the applicant will be counted in determining small business eligibility.

84. In the *Designated Entity Second Report and Order*, the Commission adopted material relationship rules. The Commission now requires the consideration of certain leasing and resale (including wholesale) relationships—material relationships—in determining designated entity eligibility. Material relationships fall into two categories: impermissible and attributable. An applicant or licensee has an impermissible material relationship when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (1) ineligible for the award of designated entity benefits, and (2) subject to unjust enrichment on a license-bylicense basis.

85. An applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues and, if applicable, total assets of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (1) eligibility for designated entity benefits and (2) liability for unjust enrichment on a license-by-license basis.

86. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships would not alone cause the Commission to examine a designated entity's ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those 35 eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

87. In recent years the Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission has also clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.

88. A consortium of small businesses or very small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business or very small business as those terms are defined in the service-specific rules. Thus, each member of a consortium of small or very small businesses that applies to participate in Auction 73 must individually meet the definition of small business or very small business adopted by the Commission for the 700 MHz Band. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

F. Provisions Regarding Former and Current Defaulters

89. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its 36 controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever

been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that, as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application in the FCC Auction System. Accordingly, applicants seeking licenses that may be offered in Auction 76 will be required to make these statements and certifications in both their short-form application for Auction 73 and their abbreviated Auction 76 application.

90. Former defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auctions 73 and 76, provided that they are otherwise qualified. Former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

91. Current defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications—are not eligible to bid in either Auction 73 or Auction 76.

92. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of § 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of § 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.

93. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of § 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of § 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form 38 applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

94. Prospective applicants should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

G. Other Information

95. Applicants owned by members of minority groups and/or women, as defined in § 1.2110(c)(3), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

96. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's FCC Form 175, which will consequently be dismissed.

97. Applicants are, however, permitted to make only minor changes to their FCC Form 175 after the short-form application deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

98. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its Auction 73 short-form application using the FCC Auction System. Applicants should not make changes to short-form applications 39 associated with Auction 76. Applicants are reminded to click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

99. In addition, during those periods outside of the initial and resubmission filing windows (i.e., when an applicant cannot electronically update its FCC Form 175), an applicant should submit a letter briefly summarizing the changes and subsequently update its short-form applications in ISAS as soon as possible. After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification and bidding credit. Any letter describing changes to an applicant's short-form application should be submitted by electronic mail to the following address: *auction73@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant (e.g.,

RE: Changes to Auction 73 Short-Form Application of ABC Corp.), and should not reference Auction 76.

100. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

101. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a major amendment as defined by § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

102. After the short-form filing deadline, applicants may make only minor changes to their short-form applications, such as deleting or adding authorized bidders (to a maximum of three). Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: *auction73@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant. Applicants must not submit application-specific material through ECFS.

III. Pre-Auction Procedures

A. Auction Seminar—November 20, 2007

103. On Tuesday November 20, 2007, the FCC will sponsor a free seminar for parties interested in participating in Auctions 73 and 76 at the FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the 700 MHz Band service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to Auctions 73 and 76.

104. To register, please provide the information listed on the Auctions 73 and 76 Public Notice released October 19, 2007 (DA 07–4236), by fax (717) 338–2850, e-mail *Auchelp@fcc.gov* or telephone (717) 338–2868 to the FCC by Friday, November 16, 2007. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction 73 Web page at *http://wireless.fcc.gov/auctions/73/*.

B. Short-Form Applications (FCC Form 175)—Due Prior to 6 p.m. ET on December 3, 2007

105. In order to be eligible to bid in Auction 73 or Auction 76, applicants must first follow the procedures set forth in Attachments D and E to the *Auctions 73 and 76 Procedures Public Notice* to submit an FCC Form 175 application electronically via the FCC Auction System. The application must be received at the Commission prior to 6 p.m. ET on December 3, 2007. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.

106. Applications may generally be filed at any time beginning at noon ET on November 19, 2007, and the filing window will close prior to 6 p.m. ET on December 3, 2007. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on December 3, 2007.

107. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit or modify their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachments D and E of the *Auctions 73 and 76 Procedures Public Notice*. FCC Auctions Technical Support is available at (877) 480–3200, or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET.

C. Application Processing and Minor Corrections

108. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

109. After the December 3, 2007, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit). Accordingly, applicants interested in participating in any potential contingent subsequent bidding must have selected license(s) available in the initial bidding as well as licenses that may be available in contingent subsequent bidding, including alternative licenses, by the deadline for submitting their application to participate in Auction 73. FCC personnel will communicate regarding a short-form application only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.

D. Upfront Payments—Due December 28, 2007

110. In order to be eligible to bid in Auction 73 and any contingent subsequent auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Only applicants that become qualified bidders in Auction 73, by, among other things, making upfront payments to be eligible to bid in Auction 73, will be eligible to participate in any contingent subsequent auction. However, qualified bidders in Auction 73 will be permitted to make additional upfront payments with respect to licenses being offered in any contingent subsequent auction at a later date. After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments for Auction 73 must be received in the proper account at Mellon Bank by 6 p.m. ET on December 28, 2007.

i. Making Upfront Payments by Wire Transfer

111. Wire transfer payments for Auction 73 must be received by 6 p.m.

ET on December 28, 2007. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The BNF and Lockbox number are specific to the upfront payments for Auction 73. Do not use BNF or Lockbox numbers from previous auctions. Wire transfer information for Auction 76 will be made available in a future public notice.

112. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045. On the cover sheet of the facsimile, write Wire Transfer—Auction Payment for Auction 73. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

113. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 73 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to deliver the upfront payment as instructed by the December 28, 2007, deadline will result in dismissal of the application and disqualification from participation in the auction as well as ineligibility for participation in any contingent subsequent bidding for 700 MHz Band licenses.

ii. FCC Form 159

114. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment F to the *Auctions 73 and 76 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

115. In the *700 MHz Auction Public Notice*, the Bureau proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In addition, consistent with the Commission's direction in the *700 MHz Second Report and Order*, the Bureau proposed that qualified bidders in Auction 73 would have an opportunity to submit additional upfront payments to obtain bidding eligibility for licenses in any contingent subsequent auction (Auction 76).

116. Under the Bureau's proposal, in order to bid on a particular license or package, qualified bidders must have selected the license(s) on FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license or package. For a package, the bidding units are calculated by adding together the bidding units of the individual licenses that make up the package. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 73, or else the applicant will not be eligible to participate in Auction 73 or in Auction 76. An applicant does not have to make an upfront 45 payment to cover all licenses the applicant selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids (via bids on licenses and/or packages) at any given time in Auction 73. If contingent subsequent bidding is necessary, qualified bidders for Auction 73 will be given an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76.

117. In the *700 MHz Auction Public Notice*, the Bureau proposed to calculate upfront payments as follows: (1) For licenses covering CMAs in the 50 states in which the licenses offered in Auction 66 were sold, $0.05 per MHz per population (MHz-pop) for Metropolitan Statistical Area (MSA) licenses and $0.03/MHz-pop for Rural Service Area (RSA) licenses; (2) for licenses covering EAs in the 50 states in which the corresponding licenses in both EA blocks offered in Auction 66 were sold, the sum of $0.05/MHz-pop for counties contained within an MSA and $0.03/MHz-pop for counties contained within an RSA; (3) for licenses covering REAGs in the 50 states in which the corresponding licenses in all three REAG blocks offered in Auction 66 were sold, the sum of $0.05/MHz-pop for counties contained within an MSA and $0.03/MHz-pop for counties contained within an RSA; (4)for licenses covering geographic areas for which an Auction 66 license was unsold, $0.01/MHz-pop; (5)for licenses covering the Gulf of Mexico, $1,000 per MHz; and (6) for all remaining licenses, $0.01/MHz-pop. For all licenses, the results of the above calculations are subject to a minimum of $500 per license and are rounded using its standard rounding procedure.

118. The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *700 MHz Auction Public Notice* and sought comment on this proposal. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment amount would determine a bidder's initial bidding eligibility. Therefore, the Bureau adopt the upfront payments and bidding units for each 46 license in Auction 73 as proposed and set forth in Attachment A of the *Auctions 73 and 76 Procedures Public Notice*.

119. In calculating its upfront payment amount, an applicant interested in bidding only on individual licenses should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round in Auction 73, and submit an upfront payment amount covering that number of bidding units. Applicants interested in bidding on packages should determine their upfront payment amount by calculating the sum of bidding units associated with each discrete license they wish to include in new bids (package or individual bids) or have included in provisionally winning bids in any single round. The bidding units associated with a given license, even if the license is included in more than one bid, will be counted only once per bidder per round. In order to make this calculation, an applicant should add together the upfront payments for all licenses comprising all combinations of licenses and packages of licenses on which it seeks to be active in any given round. If a bidder has enough eligibility to bid on certain licenses, it can place bids on the licenses individually and on packages containing those licenses without needing additional eligibility. For example, if licenses A, B, and C

each have 10,000 bidding units, and a bidder wishes in a single round to be able to bid on licenses A, B, and C individually and on packages AB and ABC, the bidder needs 30,000 bidding units of eligibility. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility for Auction 73 after the upfront payment deadline.

120. The Bureau reiterates that, in the event it is necessary to conduct Auction 76, bidders will have an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76. The instructions and deadline for doing so would be announced within five business days after the end of bidding in Auction 73.

121. For Auction 73 and any contingent subsequent auction, former defaulters must calculate their upfront payment for all licenses and packages by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

122. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied to the FCC. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.

E. Auction Registration

123. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction 73. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on license(s) initially offered in Auction 73.

124. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

125. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Tuesday, January 15, 2008, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

126. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480–3201 or (202) 414–1255 (TTY).

F. Remote Electronic Bidding

127. The Commission will conduct Auctions 73 and 76 over the Internet and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID® token is tailored to a specific auction; therefore, SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 73. In the event that it is necessary to conduct Auction 76, qualified bidders for Auction 76 will use the same SecurID® tokens as they used for Auction 73.

128. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the tokens once the auction is closed.

G. Mock Auction—January 18, 2008

129. All qualified bidders will be eligible to participate in a mock auction on Friday, January 18, 2008. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction 73

130. The first round of bidding for Auction 73 will begin on Thursday, January 24, 2008. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction 73 Structure

i. Simultaneous Multiple Round Auction With Package Bidding on C Block Licenses

131. In the *700 MHz Auction Public Notice*, the Bureau proposed using the Commission's standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E Block licenses, while enabling package bidding for C Block licenses using an auction design with hierarchical package bidding (HPB). An SMR–HPB auction format offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses and on certain pre-defined packages of specified licenses, which, for Auction 73, only include C Block licenses. A bidder may bid on, and potentially win, any number of licenses and/or packages. Typically, bidding remains open on all licenses until bidding stops on every license, unless an alternative version of the stopping rule is invoked.

132. The *700 MHz Auction Public Notice* proposed pre-defined packages for C Block licenses according to a hierarchical structure. The initial level consists of individual licenses, and the next level consists of non-overlapping packages of those licenses, such that a given license is included only once in each level. The winning set of bids could therefore consist of bids from various levels as long as each license is included in only one winning bid. The Bureau proposed to accept individual bids on C Block licenses for REAGs 1–12 (Level 1) and package bids on the following combinations of C Block REAG licenses (Level 2): (1) REAGs 1–8 (the 50 States package); (2) REAGs 10 and 12, comprising Puerto Rico, the U.S. Virgin Islands and the Gulf of Mexico (the Atlantic package); and (3) REAGs 9

and 11, comprising the U.S. Pacific territories (the Pacific package).

133. The Bureau also sought comment on alternative levels or alternative ways of packaging licenses within levels. Additionally, the Bureau proposed to conduct the auction using standard SMR procedures for all of the licenses, including the C Block licenses in the event that currently unforeseen difficulties make it impracticable to implement package bidding.

134. The majority of commenters support package bidding for C Block licenses either in general or for the HPB auction format specifically. Some commenters, however, urge the Bureau to abandon package bidding for Auction 73 under the unforeseen difficulties exception to the Commission's directive to use package bidding for the C Block licenses. These parties assert that the SMR-HPB format is too complex, will disadvantage bidders interested in only individual licenses, and will not be fully understood by bidders or implemented by the Bureau in time for the start of the auction. When the Commission directed the Bureau to adopt package bidding for the C Block, it noted that package bidding minimizes exposure risk for applicants whose business plans require the economies of scale that only can be obtained with nationwide operation, but would not preclude the participation of entities wishing to bid on individual licenses. The HPB auction format was chosen in part because it mitigates issues inherent in some other package bidding formats that give bidders interested in large packages an advantage over bidders interested in individual licenses. Of course, to the extent that providing bidders the option of package bidding favors those bidders seeking packages over those seeking individual licenses, the Bureau notes that the same argument could be applied in reverse to the other 1,087 licenses in Auction 73 that bidders will not have the option to package in order to decrease their exposure risk. After review of the record, the Bureau concluded that considerations raised in the comments opposing package bidding are not the kinds of unforeseen difficulties regarding the feasibility of package bidding for the C Block licenses that the Commission envisioned in the *700 MHz Second Report and Order*.

135. Therefore, the Bureau concludes that the SMR format for A, B, E and D Block licenses, and the HPB auction format for the C Block licenses, will best meet the needs of bidders in Auction 73, and therefore adopt them as proposed. As is typical with both formats, bids will be accepted on all individual licenses and on pre-defined packages of licenses in each round of the auction until bidding stops on every license, allowing bidders to take advantage of synergies that exist among licenses.

136. With regard to the proposed pre-defined packages for C Block licenses, the Bureau declines to adopt the alternate packages suggested by two commenters. One commenter asserts that it sees value in adopting a 12 REAG package or even allowing bidders to choose their own package. The second commenter proposed adopting packages of regions larger than REAGs (e.g., East, Midwest, West Coast) and a package of only the lower 48 States. The commenter bases its proposal for a lower 48 State package on the premise that prospective nationwide bidders have limited interest in Hawaii and Alaska, and that these states would be better served if they are not included in a nationwide package. The State of Hawaii submitted reply comments challenging the assertion that nationwide carriers have little interest in providing coverage to Hawaii, noting several major carriers already do in fact operate in Hawaii. The State of Hawaii also asserts that any nationwide package without Hawaii and Alaska unfairly discriminates against these states and its inhabitants, which would not only be inconsistent with the Communications Act, but also with Commission precedent. The commenter also suggests that the Bureau eliminate the Atlantic and Pacific packages on the grounds that bidders would not obtain any benefits from bidding on the licenses as packages. The Bureau sees no disadvantages to including the packages.

137. The Commission adopted package bidding for C Block licenses to reduce the exposure problem that might otherwise inhibit bidders seeking to create a nationwide footprint. At the same time, the Commission directed the Bureau to implement package bidding without imposing disadvantages on parties that wish to bid on individual licenses comprising the nationwide footprint. The Bureau finds that offering three packages—the 50 States, Atlantic, and Pacific packages—meets this balance by reducing exposure risk of bidders seeking to provide nationwide coverage without disadvantaging those bidders seeking individual licenses. Therefore, the Bureau adopts the pre-defined packages as proposed in the *700 MHz Auction Public Notice*.

ii. Information Available to Bidders Before and During the Auctions

138. In the *700 MHz Second Report and Order*, the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or limited information) bidding procedures, regardless of any pre-auction measurement of likely auction competition. Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. The Commission therefore directed the Bureau to propose and seek comment on more detailed procedures for employing anonymous bidding for the 700 MHz auction.

139. In the *700 MHz Auction Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications, (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. In contrast to procedures implemented for anonymous bidding in past auctions, and consistent with the *700 MHz Second Report and Order*, the Bureau proposed to withhold this information irrespective of any pre-auction measurement of likely auction competition.

140. Commenters generally support the proposal to implement limited information disclosure procedures for the 700 MHz auction, though they differ on the disclosure of specific data elements. Some commenters suggest that the Commission should inform bidders of the license(s) or license block(s) for which an overlap occurs with other applicants, citing fundamental differences between the different 700 MHz license blocks and the particular needs of small and rural bidders to better identify those bidders interested in nationwide/open access licenses. A commenter opposes disclosure of this information. The Bureau finds that revealing information on license blocks selected by competing applicants would be inconsistent with the goals of limiting information disclosure. Thus, the Bureau will not release information on licenses or license blocks selected until after the close of bidding.

141. Commenters also recommend releasing each bidder's upfront payment amount and initial bidding eligibility before the auction on the grounds that this information would help small companies better gauge the level of competition. Some entities also seek disclosure of an aggregate eligibility ratio after each round. A commenter advocates releasing the total number of

active bidders and, for each license and package, the number of bids and amount of the bids after each round. While these parties contend that release of this information would not facilitate anticompetitive practices and would not disclose bidder identities, the Bureau disagrees. As a commenter notes, release of bidder eligibility before the auction could be used by incumbents to block new entrants or for other strategic purposes. Similarly, a commenter contends that release of this information weakens anonymous bidding. This information could potentially be used to discern the identities of individual bidders. Moreover, the Bureau is particularly concerned that release of such information could foster anticompetitive bidding activity, particularly in light of the use of reserve prices in this auction.

142. Two commenters urge the Commission to release names of auction applicants and provide access to the ownership information in applicants' short form applications. This information has been made publicly available in past auctions even where limited information procedures have been implemented. The Bureau plans to continue to make available the names of applicants and their ownership information, as release of that information is necessary for other applicants to comply with the anti-collusion rules and does not undermine the purpose of its anonymous bidding procedures. To enable applicants to comply with the Commission's anti-collusion rules, once the Bureau has conducted its initial review of applications to participate in Auction 73 and Auction 76, each applicant will receive a letter that lists the other applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant.

143. The Bureau adopts the proposals set out in the *700 MHz Auction Public Notice*. Thus, the Bureau will disclose after the conclusion of each round the amount of every bid placed and whether a bid was withdrawn. More generally, the Bureau will disclose, after the conclusion of each round, all relevant information about all bids placed, withdrawn, or dropped except for the identities of the bidders performing the actions and the net amounts of the bids placed, withdrawn, or dropped. As in past auctions conducted with limited information procedures, for each license the Bureau will indicate the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release for each license the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, after each round, bidders logged in to the FCC Auction System will be able to see whether their own bids are provisionally winning. The Bureau will provide samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

144. Several commenters argue that information about the initial auction results (for Auction 73) should not be withheld in the event that a contingent auction (Auction 76) must be conducted. Some commenters urge disclosure of initial auction results for blocks that meet their reserve prices before the contingent auction, claiming that such information may be necessary to meet Securities and Exchange Commission and other regulatory requirements, to allow bidders to communicate with financial institutions, and to facilitate network build-out. Similarly, other commenters favor allowing bidders to announce that they won licenses in a block that has met its reserve price if required by law or regulation. These parties do not, however, cite any specific regulatory requirements that would compel such disclosures, and the Bureau is not aware of any such regulations. To the extent that any such requirements are related to winning bidders' payments, the Bureau notes that if Auction 76 were to be held, winning bidders in Auction 73 of licenses in the A, B, C, or E Blocks will not be required to make down payments until after the subsequent bidding. The Bureau finds that premature disclosure to financial institutions, vendors, and others of identities of successful bidders in Auction 73 would undermine the purposes of the limited information procedures.

145. Regarding Auction 76 and the timing of information disclosure, the Bureau adopts its proposal not to release until after the close of bidding in both auctions: (a) Information on the winning bidders for licenses in blocks for which the reserve price was met in the first auction, (b) information on bidder license selections and eligibility, and (c) any other information that may reveal the identities of bidders placing bids and taking other bidding-related actions on licenses in all blocks. For the D Block, however, in the event there is a winning bidder for the D Block license in Auction 73, the Bureau will make public before the close of bidding in an Auction 76 only such information as may be necessary to proceed with promptly facilitating the D Block winner's obligations to negotiate a Network Sharing Agreement with the national Public Safety Broadband Licensee in the adjacent spectrum block.

146. Commenting parties also urge the Commission to allow applicants to opt-out of Auction 76 in order to be free of anti-collusion prohibition, so long as bidder certifies that its decision has not been based on discussion with other parties concerning auction strategy or post-auction market structure. As one commenter acknowledges, reversal of the Commission's determination on this issue would need to be addressed by full Commission. As such, the Bureau cannot implement such a change in this proceeding.

147. *Other Issues*. The Bureau concluded in the rulemaking proceeding that the information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. Section 1.2105(c)(1) of the Commission's rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions. When limited information procedures are not in effect for a particular auction, each applicant's selection of licenses has been publicly available through the Commission's online short-form application database. In Auction 73 and Auction 76, however, the Commission will not disclose information regarding license selection or the amounts of bidders'' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants'' short-form applications, through its online database and certain application-based information through public notices. Thus, even without information regarding license selection, applicants would be able to comply with § 1.2105(c) by not disclosing bids or bidding strategies to any other applicants in the auction. This approach, however, could inhibit otherwise lawful communications with applicants for licenses in other geographic license areas, which the Commission's anti-collusion rule permits.

148. Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a pending auction whether applicants in Auction 73 and Auction 76 have applied for licenses in any of the same geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 73 and Auction 76, each applicant with a pending short-form application will receive a letter that lists the applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction 73 and Auction 76 applicant(s) by name but will not list the license selections of the Auction 73 and Auction 76 applicant(s). As in past auctions, additional information regarding applicants in Auction 73 and Auction 76 that is needed to comply with § 1.2105(c), *e.g.*, the identities of controlling interest(s) in an applicant and ownership interests greater than ten percent, will be available through the publicly accessible online short-form application database.

149. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction 73 and Auction 76. While applicants'' license selection will not be disclosed until after Auction 73 and Auction 76 close, the Commission will disclose other portions of short-form applications through its on-line database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants'' license selections. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

iii. Eligibility and Activity Rules

150. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 73. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units listed in Attachment A of the *Auctions 73 and 76 Procedures Public Notice*. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses or packages. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during Auction 73; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175 for Auction 73. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license or package of licenses.

151. A bidder is eligible to bid on a package of licenses if it selected all the licenses in the package on its FCC Form 175 and has sufficient eligibility. The bidding units for a package are calculated by adding together the bidding units of the individual licenses that make up the package.

152. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific minimum percentage of their current bidding eligibility during each round of the auction.

153. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. The bidding units associated with a given license will be counted only once in a bidder's activity calculation for the round, even if the bidder places a bid on the license and a bid on a package containing the license. For example, consider two licenses, A and B, each having 10,000 bidding units. Assuming a bidder bids on license A as well as the package AB in a given round, the bidder's activity would be 20,000 bidding units, calculated as the sum of the bidding units of licenses A and B. Note that the bidding units for license A are not counted twice. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

154. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 73. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

155. With package bidding in the C Block, it is possible that a bidder may have an activity level that exceeds its eligibility, since the FCC Auction System considers bids placed in 60 previous rounds when determining the provisionally winning set. If a non-winning bid placed in a previous round later becomes provisionally winning, the bidder will receive activity for the newly provisionally winning bid. When added to the activity for the bidder's provisionally winning bids from the previous round and its new bids—which were limited by the bidder's current bidding eligibility—the total activity may exceed the bidder's current bidding eligibility. If this occurs, the bidder's current bidding eligibility will not increase to accommodate the additional activity. In subsequent rounds, the bidder will not be permitted to place new bids if its total activity from provisionally winning bids exceeds its bidding eligibility.

156. A commenter argues that the Bureau should allow bidders limited additional eligibility so that they can continue to bid on licenses or packages that become provisionally winning in later rounds. The Bureau finds that allowing maximum eligibility to be increased in this way may provide an incentive for bidders to intentionally place bids that are likely to become provisionally winning in later rounds, so as to increase their eligibility outside of the usual pre-auction process that requires them to purchase eligibility with upfront payments. Thus, the Bureau will not modify its procedures as suggested.

157. A commenter proposes that the Bureau modify the activity rules to reduce the difference between the number of bidding units associated with the C Block licenses and the bidding units associated with the D Block license. It maintains that the C and D Blocks are in many ways substitutes, but notes that since the C Block has a bandwidth of 22 MHz compared to 10 MHz for the D Block, the C Block has many more bidding units. The commenter contends that because of the activity rule, the effect of this difference is to harm bidders that alternatively bid in the C and D Blocks. It therefore favors the modification of the activity rules through the attribution of a total bandwidth of 22 MHz to the D Block. The commenter maintains that this would enable bidders to freely alternate between the C and D Blocks, increasing auction efficiency and revenues. Another commenter criticizes this proposal on several grounds, including arguing that the proposal would depart from established auction practice and is inconsistent with the reserve prices. The Bureau declines to adopt the proposal. The Bureau finds that its current method of determining bidding units, combined with its activity and eligibility rules, offer bidders adequate opportunities to change bidding strategies.

iv. Auction Stages

158. In the *700 MHz Auction Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility. Finally, the Bureau proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

159. Some commenters favor the addition of a third stage with either a reduced eligibility threshold (before the two proposed stages) or a higher threshold (after the two proposed stages). According to a commenter small and regional bidders need time to acquaint themselves with the many new features and procedures in Auction 73. Therefore, the commenter proposes creating a new Stage One with a 60 percent activity threshold and moving the 80 percent and 95 percent activity thresholds to Stages Two and Three, respectively. While some other commenters support adopting a 60 percent activity threshold for Stage One, one commenter opposes any minimum activity level decrease and instead proposes a Stage Three with a 98 percent activity threshold.

160. The Bureau finds that adding a new initial first stage with a lower eligibility threshold is at this time unnecessary. When determining the bidding schedule, the Bureau needs to balance the desirability of concluding the auction reasonably swiftly with the benefit in giving bidders sufficient time for placing bids during rounds and for analysis between rounds. The Bureau finds no compelling reason to create a new first stage that requires only a 60 percent eligibility requirement. Such a lower activity requirement would unnecessarily prolong the auction by allowing bidders to postpone bidding activity until the later rounds of the auction. Establishing an 80 percent activity threshold to start the auction, and retaining the discretion to make changes as circumstances warrant represents the best compromise between allowing auction participants time to learn from the information revealed in the auction, and requiring them to participate actively throughout the auction.

161. The Bureau likewise sees no need to establish, at this time, a third stage with a 98 percent eligibility requirement, finding that a 95 percent threshold should be a sufficiently high activity requirement for the final stage of the auction. In past auctions, the Bureau established three stages using 80 percent, 90 percent, and 98 percent activity requirements. In many of these auctions, however, implementing Stage Two had little effect in terms of increasing bidding activity, and Stage Three was implemented shortly thereafter. Based on this experience, the Bureau has generally moved away from three-stage auctions in favor of two-stage auctions. Moreover, a 95 percent threshold allows bidders a little more flexibility in fulfilling their activity requirements during the final stage of the auction. Therefore, the Bureau declines to establish a 98 percent activity threshold at this time. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. The Bureau finds that, for now, two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages.

162. Stage One: During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

163. Stage Two: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19). Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

164. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopts them for Auction 73.

v. Stage Transitions

165. In the *700 MHz Auction Public Notice*, the Bureau proposed that the auction would advance to the next stage (*i.e.*, from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The

Bureau further proposed that the Bureau would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction.

166. The Bureau adopts this proposal for stage transitions. Thus, the auction will start in Stage One. The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, add an additional stage with a higher activity requirement, not to transition to Stage Two, or to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

vi. Activity Rule Waivers

167. In the *700 MHz Auction Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. Commenters proposed two variations on the Bureau's proposal regarding activity rule waivers. The Bureau declines to adopt these alternatives and adopts the proposed three activity rule waivers per bidder.

168. One commenter advocates providing bidders with two additional activity rule waivers to allow more time for decision-making during the auction. The commenter suggests that the two additional waivers would provide bidders, especially those that are consortia, greater flexibility during the auction. Another commenter opposes any additional activity rule waivers because, it argues, no clear connection exists between having additional waivers and decision-making. The Bureau agrees with the opposing commenter that the request for additional waivers does not demonstrate why the proposed three waivers are insufficient, or why consortia might have a greater need for flexibility than any other bidder. The Bureau is satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

169. Another commenter proposes a limit on activity rule waivers for bidders that are closely affiliated. That commenter expresses concern with bidders entering more than one entity in the auction in order to receive more than standard three activity rule waivers, allowing it to preserve bidding eligibility for later in the auction. The commenter proposes a total limit of three activity rule waivers for all closely affiliated applicants, *i.e.*, under common control, applying for overlapping licenses. Still another commenter disagrees noting that, while affiliated bidders may get twice the number of waivers, they would use them twice as fast as a single bidder in rounds in which they were not bidding. The Bureau agrees with the other commenter that no clear advantage seems possible. The Bureau also adds that entities are prohibited from submitting more than one application. This measure prevents bidders from entering multiple entities while permitting legitimate business plans that entail common control among more than one applicant.

170. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a proactive waiver) or applied automatically by the FCC Auction System (an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

171. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

172. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet ended.

173. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

vii. Auction Stopping Rules

174. For Auction 73, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses and packages after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

175. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 73: *Option 1*. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license or package on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license or a package of licenses for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; *Option 2*. The auction would end after a specified

number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close; and *Option 3*. The auction would remain open even if no bidder places any new bids, applies a proactive waiver, or withdraws any provisionally winning bids in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

176. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely, *e.g.*, before bidders have had an adequate opportunity to satisfy any applicable reserve prices. The Bureau noted that before exercising these options, it is likely to attempt to increase the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing the minimum acceptable bids.

177. One commenter advocates explicitly adopting an alternate stopping rule that would give bidders one final opportunity to place bids that would meet the reserve prices. The commenter believes adopting this measure will curb any incentive by some to bid in such a way to avoid the reserves being met. Another commenter opposes the proposal, given the unique nature of this auction and the complexity of the eligibility management issues.

178. The Bureau finds that the stopping rules as proposed are appropriate for Auction 73. The Bureau's experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore, Auction 73 will begin under the simultaneous stopping rule approach.

179. While the Bureau declines to adopt any of the alternate stopping rules at this time, the Bureau retains the discretion to employ the alternative versions of the stopping rule, with or without prior announcement during the auction. The Bureau will not, however, employ the first alternative (*i.e.*, Option 1) until the reserve prices have been met. This will allow bidders to continue to place new bids even if they are the provisional winning bidders. Bidders, therefore, will continue to have the opportunity to place bids until the reserve prices are met.

viii. Auction Delay, Suspension, or Cancellation

180. In the *700 MHz Auction Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue.

181. Because the Bureau's approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed rules regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

182. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

183. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders'' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

184. A commenter advocates limiting the number of rounds per day in the first phase (Stage One) of Auction 73. More than four rounds in the auction's early stage would place substantial strains on consortia's more deliberate decision-making processes. The commenter, however, suggests lifting the limit for Stage Two. Another commenter opposes limiting the number of rounds per day. The Bureau agrees with the opposing commenter that lifting the limited for Stage Two fails to demonstrate why consortia would be disadvantaged vis-à-vis other bidders unless Stage One had a maximum of four rounds per day. The Bureau add that the commenter does not provide any rationale why, if a limit were necessary to allow effective decision-making amongst consortia members, it would not hold true in Stage Two of the auction, particularly when the stakes are even higher. Therefore, the Bureau declines to adopt any limit on rounds per day. Rather, the Bureau will continue to exercise discretion with regard to the number of rounds per day under the particular circumstances of the auction.

ii. Reserve Price and Minimum Opening Bids

185. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

a. Reserve Price

186. In the *700 MHz Second Report and Order,* the Commission concluded

that establishing separate aggregate reserve prices for all the licenses in each block of the 700 MHz Band spectrum to be offered in Auction 73 will serve the public interest. More specifically, the Commission directed the Bureau to adopt and publicly disclose block-specific aggregate reserve prices, pursuant to its existing delegated authority and the regular pre-auction process and consistent with the Commission's conclusions in the *700 MHz Second Report and Order.* In the *700 MHz Auction Public Notice,* the Bureau proposed that the sum of the provisionally winning gross bids for all licenses in each block must equal or exceed the disclosed aggregate reserve price for the block before the Commission will assign licenses in that block. More specifically, the Bureau proposed the following block-specific aggregate reserve prices to be used under this proposal: Block A, $1.807380 billion; Block B, $1.374426 billion; Block C, $4.637854 billion; Block D, $1.330000 billion; Block E, $0.903690 billion. The Bureau adopts this proposal.

187. *Background.* In the *700 MHz Second Report and Order,* the Commission concluded that the block-specific aggregate prices should reflect current assessments of the potential market value of licenses for the 700 MHz Band. The Commission directed that this assessment be based on various factors including, but not limited to, the characteristics of this band and the value of other recently auctioned licenses, such as licenses for Advanced Wireless Services. The Commission reasoned that using AWS–1 auction results might be an appropriate guide for setting block-specific reserve prices reflecting a conservative estimate of final market value. Spectrum in the 700 MHz Band possesses superior propagation characteristics to AWS–1 spectrum. In addition, as of February 18, 2009, the 700 MHz Band spectrum will be unencumbered, while full access to AWS–1 spectrum requires the relocation of both Government and commercial incumbent users. Thus, other factors aside, 700 MHz Band licenses with comparable geographic service areas and bandwidth should have a higher market value than AWS–1 licenses.

188. The Commission expressly noted that the detailed rules regarding the D Block license, the D Block licensee's required construction of a network to be shared by public safety service users, and the resulting limitations on the flexibility of the D Block licensee, should be given weight in assessing the D Block's potential market value. Based solely on geographic area and spectrum block size, AWS–1 auction results might suggest a D Block reserve price of $1.7 billion. However, in light of the D Block license conditions essential to the public safety purpose of the public/private partnership, it might be appropriate to expect bidders to bid only about 75 percent to 80 percent of such an amount, or about $1.33 billion. In addition, when determining relative valuation of other blocks, the Bureau should consider the relative valuation of differing blocks in the recent auction of AWS–1 licenses.

189. The Commission further noted that in setting block-specific reserve prices, the Bureau should also give consideration to Congress's view as to the value of the spectrum, as reflected in Congressional mandates regarding the uses for revenues from this auction.

190. *Comments.* A commenter contends that the proposed reserve prices are excessive and proposes an alternative set of reserve prices roughly equal to one-fifth the reserve prices proposed by the Bureau. The commenter asserts that the Bureau's proposed reserve price represent an estimate of final license values and that establishing such a reserve, particularly in light of the potential subsequent auction of alternative licenses, is misguided. The commenter further argues that the Bureau's reliance on bidding for AWS licenses is misplaced in that it does not take into account subsequent changes in the credit markets or significant differences between AWS licenses and 700 MHz licenses, which should reduce the relative value of the 700 MHz licenses.

191. In reply, and in opposition to the comments, two commenters echo the Commission's observation that that the value of the 700 MHz licenses in fact should be greater than the AWS licenses and contend that the Bureau's proposed reserve prices reflect a conservative estimate of the likely value of the 700 MHz licenses. As one commenter notes, attempts to take into account the fluctuating state of the credit market are not appropriate, given the degree of uncertainty inherent in such attempts. While another commenter notes that the Bureau's proposal takes into account conditions placed on the various blocks of 700 MHz spectrum. Finally, the same commenter notes that the proposed reserves are consistent with Congressional expectations.

192. *Discussion.* The Bureau does not find the commenters arguments for reducing the proposed reserve prices persuasive. The commenter errs in asserting that the Bureau's proposed reserves seek to estimate the final value of the licenses. The Bureau has not attempted to determine the value of the licenses but will rely on the auction process to do so. Rather, pursuant to statutory mandate and Commission direction, the Bureau proposed reserve prices intended to represent a likely low end of the licenses' potential value, in order to assure that the public recovers a portion of the value of the public spectrum resource. Consistent with the guidance of the Commission, the Bureau adopts the proposal and will use the following block-specific aggregate reserve prices for Auction 73: Block A, $1.807380 billion; Block B, $1.374426 billion; Block C, $4.637854 billion; Block D, $1.330000 billion; Block E, $0.903690 billion. Together, these block-specific aggregate reserves sum to $10.053350 billion.

193. The D Block reserve price of $1.33 billion is discounted from an amount based more closely on AWS–1 bids because of the unique service rules and related obligations imposed upon the D Block licensee. For the A, B, C, and E Blocks, the Bureau based the reserve prices on the respective market value reflected in AWS–1 bids, adding one percent, and rounding to the nearest thousand dollars. Because of the value-enhancing propagation characteristics and relatively unencumbered nature of the 700 MHz Band spectrum, the Bureau believes these are conservative estimates, at the low end of the spectrum's potential value. Given this approach, there is no need to further reduce the proposed reserves based on the specific rules applicable to licenses for the A, B, C, and E Blocks.

194. As proposed in the *700 MHz Auction Public Notice,* the Bureau will use gross bid amounts rather than net bid amounts in determining whether the block-specific reserve prices have been met. No commenter suggested any alternative to this aspect of the Bureau's reserve price procedures. Anonymous bidding procedures that will be used in Auction 73 preclude disclosing the identity of bidders and the net amounts of bids made until after the close of bidding. Consequently, if net bids determined whether or not reserves had been met, publicly disclosing whether reserves had been met might inadvertently disclose whether applicants eligible for bidding credits held certain provisionally winning bids, potentially disclosing the identity of the bidders. For example, presuming net bids determined whether or not the reserve is met, for the reserve not to be met when the provisionally winning bid on the D Block license is for $1.5 billion dollars, the party making the bid must be an applicant eligible for a bidding credit. Depending on the number of

parties eligible for a bidding credit competing for the D Block license, this information might disclose the identity of the provisionally winning bidder, thwarting the Commission's anonymous bidding procedures. Moreover, net bid amounts, unlike gross bid amounts, may decline even as the gross bids increase. For example, a party not eligible for a bidding credit might hold a provisionally winning bid of $1.4 billion on the D Block license, in which case the reserve would be met. However, in the next round, a party eligible for a bidding credit might place a provisionally winning bid of $1.5 billion, increasing the value bid for the license. However, because the party eligible for a bidding credit might have a net bid less than the reserve, now the reserve would not be met. The Bureau believes that it serves the public interest for bidders to know when the reserve is met and to know that once a reserve is met that fact will not change. This certainty will give bidders greater confidence in the significance of their bids and therefore may enhance competition. For these reasons, the Bureau will use gross bid amounts rather than net bid amounts in determining whether block-specific reserve prices have been met.

195. The Bureau will count the gross amount of any withdrawn bids for licenses toward meeting the reserve prices for several reasons. First, withdrawn bids presumably reflect sincere valuations of the license, notwithstanding the withdrawal and the reserve is intended to measure that valuation. Second, counting withdrawn bids assures that once a reserve is met that fact will not change. Third, if the Bureau did not count withdrawn bids, bidders could attempt to use bid withdrawals as a strategic mechanism to prevent auction results from satisfying a reserve in order to force an auction of alternative licenses.

196. The Commission's rules and the procedures for Auction 73 allow each bidder one round in which the bidder may withdraw provisionally winning bids for licenses not subject to package bidding. Allowing bidders to withdraw provisionally winning bids enables bidders to respond to price discovery as the auction develops by adopting alternative plans, thereby encouraging bidders to compete at early stages in the auction. Accordingly, the Bureau presumes that bids placed and withdrawn reflect bidders' sincere valuations of the relevant licenses. Consistent with this presumption, the Commission's rules require bidders to cover any shortfall if a subsequent winning bid for a license is less than a withdrawn provisionally winning bid.

197. Second, counting withdrawn bids is essential to assuring that once a reserve price is met, that fact does not change. With regards to bid withdrawals, when a bid is withdrawn, there is no provisionally winning bid on that license until a new high bid is placed on it in a subsequent round. Accordingly, if the Bureau does not count withdrawn bids, then the amount counted for a particular license toward meeting the reserve price could drop from whatever the withdrawn bid is to zero. For example, if a provisionally winning bid on the D Block license of $2.66 billion is withdrawn and only a provisionally winning high bid is counted toward the reserve, the reserve will not be met, notwithstanding the fact that a round before there was a provisionally winning bid in an amount equal to twice the reserve.

198. Third, if the Bureau does not count a withdrawn bid toward meeting the reserve, the Bureau would allow a bidder's decision to withdraw a bid to affect whether or not the reserve price has been met. As the foregoing example indicates, a bidder could outbid rivals for a license in amounts far in excess of the reserve and then, at the last minute, withdraw its bid in an attempt to prevent the auction results from meeting the applicable reserve price. If the withdrawing bidder's competitors had moved to other blocks due to the withdrawn bid, they may no longer have an interest or the budget to return and bid again on the license subject to the withdrawal. In that event, the withdrawal might succeed at preventing the reserve from being met and at forcing an auction of alternative licenses.

199. The Bureau will count the gross amount of either the provisionally winning bid on a license, or on a package that includes the license, or, if higher, the highest withdrawn provisionally winning bid on a license when determining whether a reserve price has been met. The Bureau will not count more than one bid per license, be it a provisionally winning or withdrawn bid, towards meeting the relevant reserve price. In the case of licenses with multiple withdrawn bids or a withdrawn bid and a provisionally winning bid, the Bureau will count the highest of the gross bid amounts toward the reserve price. Other than the gross amounts of withdrawn bids, licenses without provisionally winning bids will not count towards meeting a reserve price.

200. Finally, the Bureau will issue an announcement in the FCC Auction System stating that a reserve has been met immediately following the first round in which that occurs. Both the registered bidders and the general public will be able to view such announcements through the Commission's Web site. The current total of relevant provisionally winning bids may not determine whether or not the reserve has been met, given that the Bureau also will count withdrawn bids toward meeting the reserve. By making an announcement when the reserve is met, the Bureau will free auction observers and participants therefore from a need to monitor withdrawn bids over the course of the auction in order to determine whether the reserve has been met and avoid any uncertainty.

b. Minimum Opening Bids

201. In addition to proposing aggregate reserve prices, the Bureau proposed in the *700 MHz Auction Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids. Specifically, for Auction 73, the Bureau proposed to calculate minimum opening bid amounts as follows: (1) For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of $0.03/MHz-pop; (2) for licenses covering geographic areas for which a corresponding Auction 66 license was unsold, $0.01/MHz-pop; (3) for licenses covering the Gulf of Mexico, $1,000 per MHz; and (4)for all remaining licenses, $0.01/MHz-pop. For all licenses, the results of the above calculations are subject to a minimum of $500 per license and are rounded using the Bureau's standard rounding procedure. The Bureau proposed to calculate the minimum opening bid for any package as the sum of the minimum opening bids for the licenses in the package. The Bureau sought comment on this proposal and, in the alternative, whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids.

202. The Bureau received a range of comments concerning the proposed minimum opening bids. One commenter supports the Bureau's proposed method for establishing minimum opening bid amounts. However, another commenter advocates calculating minimum opening bids on the same basis that was used for Auction 66, rather than on one that uses

the winning bids from that auction. A third commenter opposes using minimum opening bids based on Auction 66 results, arguing that the 700 MHz Band spectrum is not readily comparable to that offered in Auction 66. It maintains that some prices in that auction resulted from one-time bidding wars, so that RSA minimum opening bids based on these prices would be overly high and harm small and rural carriers. A commenter also contends that the proposed minimum opening bids would discourage these carriers from participating. It proposes that the minimum opening bids from Auction 66 should generally be used. In addition, the same commenter claims that reducing the minimum opening bids would prevent the auction from proceeding at too rapid a pace. RTG agrees that the proposed minimum opening bids for some RSAs are too high, and proposes that these be reduced to either the same level as the upfront payments or capped at 25 percent of the median net high bid for all RSAs sold in Auction 66. Another commenter generally criticizes as arbitrary the proposals to lower the minimum opening bids to the value of the upfront payments, but agrees that certain RSA minimum opening bids may be overly high. A commenter expresses support for the argument that reducing the minimum opening bids will make the auction less likely to proceed overly quickly.

203. The Bureau finds that the minimum opening bid amounts proposed in the *700 MHz Auction Public Notice* are generally appropriate. While the record indicates that the proposed minimum opening bid amounts are higher than many parties would like, the proposed amounts better enable the Commission to meet the statutory objective of recovering for the public a portion of the value of the spectrum resource made available for commercial use. The proposed minimum opening bid amounts also will help the Commission meet its statutory deadlines for auctioning this spectrum.

204. In response to comments, however, the Bureau modifies the proposed minimum opening bids for certain rural licenses. The Bureau recognize concerns commenters raised regarding proposed minimum opening bids and the potential for some licenses, particularly those in rural areas, to remain unsold after the auction. Thus, for RSA licenses only (CMAs 307–734), minimum opening bids will not be greater than $0.10/MHz-pop. Accordingly, the Bureau adopts the revised minimum opening bid amounts and set the minimum opening bids using the revised formulas as follows: (1) For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of $0.03/MHz-pop, for RSA licenses only, subject to a maximum of $0.10/MHz-pop; (2) for licenses covering geographic areas for which a corresponding Auction 66 license was unsold, $0.01/MHz-pop; (3)for licenses covering the Gulf of Mexico, $1,000 per MHz; and (4) for all remaining licenses, $0.01/MHz-pop.

205. Two commenters suggest that the minimum opening bid for the D Block should be set at its reserve price since it is only one license and will not be assigned if the reserve is not met. Another commenter opposes this suggestion, arguing that setting the D Block minimum opening bid at the reserve bid would deny bidders the opportunity to determine the relative value of the D Block, and may even hurt the winning bidder's ability to finance its bid for the D Block. The Bureau agrees that there may be value, to bidders and others, in accepting bids for the D Block short of the reserve. Therefore, the Bureau adopts the minimum opening bid for the D Block as proposed in the *700 MHz Auction Public Notice.*

206. The Commission did not receive any comments addressing the proposal that the Bureau retain the discretion to reduce minimum opening bid amounts. The Bureau adopts this proposal. The minimum opening bid amounts are reducible at the discretion of the Bureau. The Bureau emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses or packages.

207. The specific minimum opening bid amounts for each license available in Auction 73 calculated pursuant to the procedures set forth in Attachment A of the *Auctions 73 and 76 Procedures Public Notice.*

iii. Bid Amounts

208. In the *700 MHz Auction Public Notice,* the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license or package using one or more predefined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license or package. A commenter proposed best and final bid procedures to allow bidders a chance to enter their own bid amounts, if they wish to bid more for a license but less than the minimum acceptable bid increment would require. The commenter believes adopting a best and final bid procedure would give bidders a better opportunity to bid up to the full amount of their final license valuations. Two commenters oppose creating this best and final bid procedure because it may encourage gaming the auction system and would be unfair to bidders that have a provisionally winning bid. The Bureau recognize that there may be circumstances under which the proposed procedure could enhance the economical efficiency of the auction, but find that the costs in terms of increased auction complexity and opportunity for anti-competitive signaling would outweigh the benefits in Auction 73. The Bureau adopts the proposal set out in the *700 MHz Auction Public Notice.*

209. *Minimum Acceptable Bids.* Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license or package that includes the license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the licenses in the package. Minimum acceptable bids are calculated based on current price estimates and an activity-based formula.

210. *Current Price Estimates.* Under the proposed HPB auction procedures, after there is a provisionally winning bid for a license, the FCC will determine a current price estimate (CPE) for each license in each round as a basis for calculating minimum acceptable bids. For non-C Block licenses the CPE will be the provisionally winning bid amount, so that minimum acceptable bids are based on provisionally winning bid amounts, as in an SMR auction without package bidding. For licenses in the C Block subject to HPB, if a bid on an individual license is provisionally winning, the CPE for that license will be the provisionally winning bid amount. If a package bid is provisionally winning, the CPEs for individual licenses in the package will be constructed by scaling up the bids on individual licenses so that the sum of

the license CPEs equals the provisionally winning package bid. Bids are scaled up by adding shares to the highest bid received so far in the auction for each license in the package. These shares are proportional to the bidding units associated with each license relative to the total number of bidding units in the package. The proposed mechanism for determining CPEs in an HPB auction format is described in more detail in Attachment H of the *Auctions 73 and 76 Procedures Public Notice*.

211. Commenters disagree on the method for calculating the CPEs for C Block packages. One commenter suggests using current high bids as weights when scaling up bids. Another commenter advocates using provisionally winning bids, not bidding units, to determine CPEs for C Block bids while other commenters support the Bureaus proposed method of calculating CPEs.

212. The Bureau does not agree that it should scale up license prices using current bid amounts, since doing so may encourage undesirable strategic bidding. Bidders would have an incentive to bid up the prices of other licenses while holding back on the licenses they are interested in, in order to force other license prices to bear a larger share of the shortfall.

213. The Bureau also declines to adopt the suggestions of commenters that it base the minimum acceptable bids for C Block REAG licenses directly on the highest bids for those licenses. Scaling up the minimum acceptable bid amounts for licenses in a package, so that the sum of bids on individual licenses equals the minimum acceptable bid on the package, mitigates the coordination or threshold problem that may face bidders trying to compete with a large package bid in a package bidding auction. Absent such a procedure, package bid prices could become disproportionately large relative to the prices for the package components, making it difficult for bidders on the individual licenses to compete with the package bid, especially since bidders on the individual licenses may bid cautiously, hoping that bidders on other licenses will make up the difference required to catch up with the package bid.

214. The Bureau does not believe that the proposed method of calculating CPEs is overly complex. In fact, the Bureau will use HPB in part because the mechanism for calculating CPEs is significantly simpler than other package bidding pricing mechanisms that adequately address coordination issues.

215. *Activity-Based Formula.* Under the Bureau's proposal, once CPEs are calculated, minimum acceptable bids are then determined for each license as the amount of the CPE plus a percentage of the CPE. The percentage is calculated using the activity-based formula. In general, the percentage will be higher when many bidders are bidding on a license, or on a package containing a license, than when few bidders are bidding on a license.

216. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index which is a weighted average of (a) the number of distinct bidders placing a bid on the license, including package bids, in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the CPE amount to obtain the minimum acceptable bid for the next round.

217. The Bureau proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.2 (20%). At these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the CPE (which for non-C Block licenses will equal the provisionally winning bid), depending upon the bidding activity covering the license. Equations and examples are shown in Attachment G of the *Auctions 73 and 76 Procedures Public Notice.*

218. A number of commenters addressed the activity-based formula to calculate minimum acceptable bids. One advocates increasing the activity weight factor from 0.5 to, for example, 0.75, so that the current round's activity has more weight in determining the next rounds minimum acceptable bid and further advocates modifying the minimum acceptable bid formula by decreasing the floor from the proposed 10 percent to 5 percent, and decreasing the ceiling from the proposed 20 percent to 10 percent. Other commenters express support for the change in floor and ceiling percentages.

219. In the *700 MHz Auction Public Notice*, the Bureau notes that it retains discretion to limit the absolute amount by which a minimum acceptable bid for a license may increase over the previous provisionally winning bid—for example, the Bureau could set a $10 million cap on increases in minimum acceptable bid amounts over provisionally winning bids—and the Bureau sought comment on the circumstances under which the Bureau should employ such a limit. A commenter suggested a cap on bid increments of $150 million per license per round would help avoid problems associated with bids rising more quickly than bidders, especially new entrants, can obtain approval for the additional funds, and would not delay the auction significantly.

220. The Bureau recognize bidder concerns that very rapid increases in minimum acceptable bids may potentially discourage bidder participation, inhibit price discovery, and create bid approval issues, especially since the minimum opening bids in Auction 73 are higher than were the Bureau's starting bids, for example, in Auction 66. At the same time, since the licenses initially offered in Auction 73 will not be sold unless reserve prices are met, it will be useful for the auction to move at a reasonably fast pace at least until reserve prices are satisfied. The Bureau reiterates that it has the discretion to modify minimum acceptable bid amounts—by changing the activity-based formula parameters or by imposing or modifying a cap on the dollar amount of bid increments—as it sees fit during the auction. Taking commenter concerns into account, the Bureau determined that it will retain initial floor and ceiling parameters at 10 and 20 percent, respectively, as proposed, but the Bureau will begin the auction with a $100 million cap on the amount of the bid increment. That is, minimum acceptable bids for the next round generally will be between 10 and 20 percent higher than provisionally winning bids, but they will not exceed provisionally winning bids by more than $100 million dollars.

221. *Additional Bid Amounts.* Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) * (1 + 0. 1), rounded, or (minimum acceptable bid amount) * 1. 1, rounded;

the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.2, rounded; etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.

222. For Auction 73, the Bureau proposed to set the bid increment percentage at 0. 1, so that any additional bid amounts above the minimum acceptable bid would each be 10 percent 85 higher. For non-C Block licenses, the Bureau proposed to begin the auction with one acceptable bid amount per license (the minimum acceptable bid amount). For C Block licenses subject to HPB, the Bureau proposed to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts) and one acceptable bid amount per package (the minimum acceptable bid amount and no additional bid amounts).

223. The Bureau received no comments on its proposal to set the bid increment percentage at 0.1. The Bureaus adopts the proposal to begin the auction with a bid increment percentage of 0.1.

224. Several commenters, however, advocate providing more than one acceptable bid amount per license for the non-C Block licenses. The Bureau is not persuaded that additional bid amounts provide bidders with significantly more flexibility to express their valuations. The Bureau experience with past auctions indicates that bidders rarely use multiple increment bids as the commenters suggest—to express their final valuations more precisely—but more frequently use jump bids as a means of signaling other bidders. As noted in the *700 MHz Auction Public Notice*, the Bureau proposed that bidders on licenses in the C Block be able to make multiple increment bids to ensure that bidders on individual licenses can effectively compete with package bids, even when there are not individual bids on one or more of the licenses in the package. Absent that need for multiple increment bids in the non-package bidding blocks, the Bureau will not modify its proposal. Therefore, the Bureau will begin the auction with one acceptable bid amount for each non-C Block license and C Block packages and three acceptable bid amounts for each C Block license.

225. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the dollar cap on bid increments, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid 86 amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis.

iv. Provisionally Winning Bids

226. At the end of each bidding round, a provisionally winning bid will be determined based on which combination of bids together provides the greatest aggregate gross amount. Provisionally winning bids at the end of the auction become the winning bids, provided that applicable reserve prices are met. For the 1,087 licenses not subject to package bidding, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received for the license, taking into account the bids placed in the round and the provisionally winning bids from the previous round. For licenses in the C Block subject to HPB, the FCC Auction System will determine which combination of individual and package bids yields the highest aggregate gross bid amount, taking into consideration each bidder's highest bid on each license or package submitted up to that point in the auction. These bids become the provisionally winning bids for the round. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

227. In order to determine which combination of bids on licenses and/or packages yields the highest aggregate bid amount in a HPB auction, the FCC Auction System compares aggregate bid amounts across the various levels in a recursive process. It first compares, for each package in the second level, the sum of the highest individual license bids from the first level with the highest bids on packages in the second level containing those licenses. Those bids that generate the maximum total bid amounts become provisionally winning. Attachment H of the *Auctions 73 and 76 Procedures Public Notice* provides additional detail on this procedure.

228. In the *700 MHz Auction Public Notice*, the Bureau proposed to break ties randomly. A commenter suggests that because there will be at most a single acceptable bid amount for all but the individual C Block licenses, there will be multiple ties, and that therefore, 87 the Bureau should consider alternate means of breaking ties. Another commenter opposes this proposal, arguing that adopting such a procedure for breaking ties would result in bidders feeling pressure to submit their bids hastily which would raise bidding costs, increase the potential for bidding errors, and discourage proper analysis and review before submitting bids.

229. In previous FCC auctions, even though up to nine acceptable bid amounts were permitted, multiple increment bids accounted for only a small fraction of the total number of bids placed. The Bureau does not expect that the frequency of tied bids will be significantly different than in past auctions, and the Bureau does not adopt any changes to its tie-breaking procedures. Hence, the Bureau adopts the proposal. The FCC Auction System will assign a random number to each license in each bid upon submission. In the event of ties among bids that generate the highest aggregate gross bid amount, the set of bids with the highest sum of random numbers becomes provisionally winning. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

230. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 73. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

231. A bidder's ability to bid on specific licenses or packages of licenses is determined by two factors: (1) The licenses selected on the bidder's FCC Form 175; and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

232. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

233. In each round, eligible bidders will be able to place bids on a given license or package in one or more pre-defined bid amounts. For each license

and package, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

234. Until a bid has been placed on a license or a package that includes the license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license or a package that includes the license, minimum acceptable bids for a license.

235. During a round, an eligible bidder may submit bids for as many licenses as it wishes, remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds (in blocks without package bidding), drop non-provisionally winning bids (C-Block licenses or packages), or permanently reduce eligibility. If a bidder submits multiple bids for the same license or package in the same round—multiple bids on the exact same license or package, not one bid on a package and one bid on a license in that package—the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed, dropped, or withdrawn its bid do not count towards the bidder's current activity.

236. For licenses subject to package bidding in HPB, the FCC Auction System considers each bidder's highest bid on each license or package when determining the 89 provisionally winning bids. Consequently, for licenses in the C Block, an individual license or package bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. This may occur even if the bidder does not have the bidding eligibility to cover the newly-provisionally winning bid. This contrasts with the SMR procedure used for licenses not subject to package bidding, in which only provisionally winning bids from the previous round and bids placed during the round are considered when determining provisionally winning bids.

237. A commenter requests that the Bureau clarify that a bidder can win a license or package that becomes provisionally winning, after not having been part of the winning set in the previous rounds; the Bureau clarifies that point here. Another commenter opposes allowing a bidder to win licenses with bidding units exceeding its eligibility at the auction's end. The commenters argue that winning reactivated bids may force bidders to win more licenses than they can afford. The Bureau does not accept the proposal that it not allow bidders to win licenses with bidding units that exceed its eligibility. The Bureau recognizes that occasionally bidders may need to change bid strategies as prices rise. Accordingly, the Bureau provide limited opportunities for bidders to withdraw and drop bids, which if used carefully, allow bidders to avoid winning licenses they no longer wish to win. Thus, the Bureau finds that the requested restriction on winning bids that exceed eligibility is unnecessary to protect bidders from winning more than they wish to win.

238. The Bureau encourages bidders on licenses and packages in the C Block to bear in mind that their highest bid on each package or license will be considered every time the FCC Auction System determines a new set of provisionally winning bids. This feature allows bidders on individual licenses to compete more effectively with package bids, since their individual license bid can combine with bids on other individual licenses placed in previous rounds, and stabilizes CPEs. Bidders will be able to evaluate the extent to which a bid placed in a previous 90 round is likely to become winning by comparing the bid to the other considered bids for the license or package.

239. Finally, bidders are cautioned to select their bid amounts carefully because bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

v. Bid Removal, Bid Withdrawal, and Dropped Bids

240. In the *700 MHz Auction Public Notice*, the Commission proposed bid removal, bid withdrawal, and dropped bids procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses not subject to package bidding (i.e., all licenses except in the C Block) in no more than two rounds during the course of the auction. The Bureau further proposed that bidders be able to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction.

241. *Bid Removal.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 73.

242. *Bid Withdrawal.* Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for non-C Block licenses using the withdraw bids function in the FCC Auction System. A 91 provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

243. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a place holder provisionally winning bidder on the license until a new bid is submitted on that license.

244. The *700 MHz Auction Public Notice* proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion. The Bureau received no comments on the number of proposed withdrawal rounds.

245. The Bureau has decided, in contrast to the proposal in the *700 MHz Auction Public Notice*, to limit each bidder to withdrawing bids in only one round of the auction. In recent auctions, the Bureau has detected bidder conduct that, arguably, may have constituted anticompetitive behavior through the use of bid withdrawals. While continuing to recognize that bid withdrawals may reduce risk associated with efforts to secure various licenses in combination, analysis of previous auctions indicates that bidders rarely

need two withdrawal rounds to avoid aggregation risk. Therefore, the Bureau concluded that, for Auction 73, adoption of a limit on the use of withdrawals to one round per bidder will better balance the need for bidding flexibility with the goal of discouraging anti-competitive bidding behavior. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to one round.

246. The Bureau received a number of comments and replies addressing the proposal not to allow withdrawals on provisionally winning bids for licenses in the C Block. One commenter urges that bidders on C Block licenses should have the same withdrawal options as other bidders. It asserts that this would reduce the exposure risk concerns for C Block bidders. Another commenter asserts that the Bureau's proposal to not allow withdrawals on C Block licenses creates major financial risks for bidders. A third commenter contends that the proposed bid withdrawal rules should be modified, because they could discourage bidding in the C Block and restrict bidders from seeking alternative licenses in later rounds of the auction. A commenter maintains that the highest bids on individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids.

247. The Bureau proposed not to permit withdrawals of provisionally winning bids in the C Block because, with package bidding, a withdrawn bid can affect the composition of the provisionally winning set of bids, thus affecting the status of the bids of other bidders. In addition, under the mechanism used to determine CPEs in HPB, a withdrawn bid can affect the prices of other licenses. In SMR, in contrast, license-by-license bidding ensures that a withdrawn bid affects only the status of the bidder placing the withdrawal. Since bidders would be able to use withdrawals in the C Block to affect other bidders, permitting withdrawals would facilitate undesirable strategic bidding behavior. Therefore, to avoid the potential for gaming, the Bureau maintains its position not to permit withdrawals of provisionally winning bids in the C Block.

248. A commenter suggests that withdrawals not be permitted in the D Block. Because the D Block license is nationwide, bidders do not face the risk of winning an incomplete aggregation of licenses in the block. The Bureau will permit that each bidder have only one round in which to withdraw bids, but it does not impose a special prohibition on withdrawals in the D Block, recognizing that D Block bidders may also need to consider their financial commitment to bids in the C Block, where they are unable to withdraw provisionally winning bids.

249. *Dropped Bids.* A bid for a package or a license in the C Block can become provisionally winning many rounds after it was placed, since HPB considers bids made in previous rounds when determining provisionally winning bids. These non-provisionally winning bids are useful to the auction since they enhance the ability of bidders interested in single licenses or smaller packages to combine their bids with the bids of others to compete with a large package bid, and they provide stability to the process for determining current price estimates. It may be the case, however, that a bidder wishes to focus on alternative licenses instead, and no longer wishes to win one of its previous bids. In order to allow bidders to opt out of non-provisionally winning bids that they no longer wish to win, the Bureau proposed that under HPB, for licenses subject to package bidding, bidders be allowed a limited number of opportunities to drop non-provisionally winning bids from further consideration in the auction.

250. Eliminating non-provisionally winning bids from consideration may affect the current price estimates of other licenses, thereby affecting other bidders. This ability to affect the bids of other bidders may lead to undesirable strategic use of dropped bids. Therefore, the *700 MHz Auction Public Notice* proposed to permit bidders to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction. To discourage bidders from dropping bids in order to disadvantage their competitors, the *700 MHz Auction Public Notice* also proposed the following restrictions on the circumstances under which bids may be dropped and on the bidder's subsequent bidding activity: (1) A bidder that is a provisionally winning bidder on a package will not be permitted to drop bids on licenses that are included in the package; (2) a bidder that drops its bids on a license or package will not be permitted to submit further bids on that particular license or package during the auction; and (3) a bidder that drops its bids on a license will not be permitted to submit any bids on packages containing that license for the duration of the auction.

251. Under these proposals, if a bidder drops a bid on a package, it will be permitted to bid individually on the licenses in the package. When a bid is dropped, all of the bidder's previous bids on that license or package are removed from consideration.

252. No payments are associated with dropped bids. The round in which a bidder may drop non-provisionally winning bids from consideration will be at the bidder's discretion. The Bureau sought comment on these proposals, and on the possibilities of not allowing dropped bids, of allowing dropped bids not subject to all the restrictions proposed, and of imposing other restrictions than proposed.

253. The Bureau received a number of comments and reply comments addressing dropped bids. Several entities favor permitting bidders to re-bid on licenses they previously dropped, some also suggested that dropped bids should be subject to withdrawal payments that the Bureau should consider disallowing dropped bids, and that dropped bids should be announced in advance. A commenter argues that permitting dropped bids in only one round favors package bidders, and may discourage bidders interested in individual licenses from competing in the C Block.

254. Another commenter maintains that the individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids. It also proposes that bidders that are outbid on individual REAG C Block licenses should not be committed to their bids if the higher bidder withdraws or drops its bid. Instead, the commenter recommends that the individual license should revert to the Commission with a minimum acceptable bid equal to the second highest bid price.

255. The Bureau also received several requests for clarification of its intended procedures with respect to dropped bids. A commenter suggests that the Bureau allow bidders who drop a package bid to be able to bid on the individual licenses in the dropped package. The Bureau clarifies that this is its intention. The Bureau is not persuaded that it should modify the 95 proposed procedures on dropped bids. Dropped bid procedures in a package bidding environment must be designed to avoid creating disadvantages for other bidders—intentionally or unintentionally—when bids are pulled out of consideration, and the Bureau's rules are designed with that goal in mind. For example, since withdrawn provisionally winning bids can affect the winning bids of other bidders, the Bureau permit drops on non-provisionally winning bids only. Because it is more difficult for bidders on individual licenses to compete against a package bid when only current

round bids are considered, the Bureau considers bids placed in all rounds, including after a bid is dropped, in order not to give an undue advantage to package bidders.

256. In addition, the Bureau finds that these dropped bids procedures, and HPB procedures in general, strike a careful balance between permitting bidders adequate bidding flexibility and discouraging insincere and anti-competitive bidding behavior. For example, the prohibition against rebidding on a license that has been dropped will keep bidders from strategically shifting off of a license so that its price will fall relative to the other licenses competing against a package bid, and then rebidding at a lower relative price. The Bureau adopts the proposal to permit bidders on licenses and packages in the C Block to drop non-provisionally winning bids during any one round of the auction.

257. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s). In Auction 73, if a bid is withdrawn on a license in a block that does not meet the reserve price in the initial auction, withdrawal payments will be based on the provisionally winning bid or bids for the license in Auction 76, or in any subsequent auction, consistent with the Bureau's usual withdrawal payment rule. In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the 96 payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

258. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. No interim bid withdrawal payments will be assessed until the conclusion of Auction 76. In the *700 MHz Auction Public Notice,* the Bureau proposed to establish the percentage at ten percent (10%) for the 700 MHz Band auction and sought comment on the proposal.

259. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment.

vi. Round Results

260. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. If the license is provisionally winning and part of a larger package additional details regarding the package that contains the specific license will be 97 available. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

vii. Auction Announcements

261. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Auction 76

262. In the *700 MHz Second Report and Order*, the Commission noted the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum. Accordingly, the Commission concluded that if licenses for the A, B, C or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) in Auction 73, the public interest will be served by offering alternative licenses for the relevant blocks in a subsequent auction, as soon as possible after the initial auction. Similarly, if the license for the D Block is not assigned because the reserve price for that license is not met, the license for the D Block may be offered again. For administrative purposes, the Bureau designates any such subsequent bidding as Auction 76.

263. As detailed in the *700 MHz Second Report and Order*, any alternative A, B and E Block licenses will be subject to alternative performance requirements. Alternative C Block licenses will be based on different geographic areas and spectrum bandwidth. In addition, the alternative C Block licenses will not be subject to the open platform conditions applicable to the licenses initially offered for the C Block.

264. The Commission concluded that the public interest in prompt licensing of 700 MHz spectrum and the related nature of licenses in Auctions 73 and 76 made it appropriate to adopt auction procedures treating Auctions 73 and 76 as a single auction for purposes of assessing bidders' qualifications and applying the Commission's anti-collusion rule. The Commission directed the Bureau to permit only qualified bidders in Auction 73, to participate in Auction 76, and to use the same auction design, including the applicable aggregate reserve price(s), insofar as possible. The Commission also required the Bureau to establish procedures that give applicants an opportunity to obtain bidding eligibility specifically for licenses offered in a contingent subsequent auction. Accordingly, the Bureau sought comment on specific procedures for contingent subsequent bidding. Generally, the Bureau will apply the Commission's competitive bidding rules with a presumption that Auctions 73 and 76 should be considered to be a single auction, subject to explicit exceptions when necessary. With the following detailed exceptions, the Bureau will apply all of the previously discussed procedures for Auction 73 to Auction 76.

A. Announcement of Auction 76

265. If, at the close of bidding in Auction 73, the aggregate reserve price for any block has not been met, the Bureau will issue an announcement that bidding in Auction 73 has closed and that Auction 76 will commence on a date not later than three weeks following the announcement. The announcement of Auction 76 will establish the deadline by which Auction 73 qualified bidders that selected licenses to be offered in Auction 76 may

obtain additional bidding eligibility for Auction 76 by supplementing their upfront payments, if necessary. In the event that the reserve price for the D Block license is met during Auction 73, a Closing Public Notice will be released with respect to the D Block. In the event that Auction 73 results meet the reserve prices in all blocks, the Bureau will proceed to issue a Closing Public Notice and Auction 76 will not be held.

B. Licenses To Be Offered

266. Any licenses in the A, B, D and E Blocks available in Auction 76 will cover the same geographic areas and frequencies as such licenses offered in Auction 73. However, the alternative C Block will include C1 Block licenses offered in each of the 176 EAs and C2 Block licenses offered in each of the 12 REAGs. A complete list of licenses that may be available in Auction 76 is included as Attachment B of the *Auctions 73 and 76 Procedures Public Notice.*

C. Auction Structure

i. Licenses for Blocks A, B, D and/or E

267. If Auction 76 offers licenses in blocks not subject to package bidding in Auction 73—Blocks A, B, D, and/or E—those block will not be subject to package bidding in Auction 76, and will be offered using the Commission's standard SMR auction design. The procedures applicable to the auction will be the same with respect to licenses for Blocks A, B, D and E in Auction 73.

ii. Alternative Licenses for C Block—Available Packages

268. In the *700 MHz Auction Comment Public Notice*, the Bureau sought comment on whether to accept package bids for alternative licenses for the C Block using the HPB auction design for the initial C Block licenses. One commenter proposed that package bids be accepted on three potential packages, one package of all C1 Block licenses, one package of all C2 Block licenses, and one package of all C 1 and C2 Block licenses. Two other commenters argue against accepting any package bids for alternative C Block licenses, contending that the complexity that they believe should preclude package bidding with respect to the original 12 C Block licenses will be further exacerbated should the Commission offer 188 alternative C1 and C2 Block licenses in subsequent bidding.

269. The Bureau concluded that it will use non-package bidding SMR procedures for licenses in the C1 Block and HPB package bidding procedures for C2 Block licenses. This approach balances the Commission's interest in providing opportunities for new entrants competing on a nationwide basis with its goal of offering alternative licenses that may be of greater interest to a different mix of bidders, including smaller entities.

270. Accordingly, if there is subsequent bidding on alternative licenses in the C Block, the Bureau will employ the HPB auction design for the C2 Block only, with package bids accepted on the packages. The procedures applicable to the HPB auction of C2 Block licenses will be the same as those with respect to C Block licenses in Auction 73, subject to the differences.

271. Licenses in the C1 Block will be auctioned using the SMR auction procedures for licenses in Blocks A, B, D and E in auctions 73 and 76. Bids for alternative C1 Block licenses will be accepted on individual EA Block licenses only.

272. With respect to C2 Block licenses, bids will be accepted on individual REAG licenses, and on three packages, consisting of a package of REAGs 1–8 (the 50 States), REAGs 10 & 12 (the Atlantic territories), and REAGs 9 & 11 (the Pacific territories). The hierarchical package structure for the C2 licenses is the same as was adopted for the C Block licenses in auction 73.

D. Bidder Qualification

273. As directed by the Commission, only applicants found qualified to bid in Auction 73 may be eligible to bid in Auction 76. To be eligible to bid in Auction 76, an Auction 73 qualified bidder also must have selected a license offered in Auction 76 on the abbreviated Auction 76 application filed together with its application to participate in Auction 73. The announcement that Auction 73 bidding has ended without one or more aggregate reserve prices 101 being met also will announce the deadline by which such bidders may submit supplemental upfront payments to purchase bidding eligibility in the subsequent auction.

274. In response to the *700 MHz Auction Public Notice*, a commenter contends that the Commission's treatment of Auction 73 and any contingent subsequent auction as a single auction for purposes of the Commission's anti-collusion rule requires that applicants select all licenses in which they may be interested, including potential alternative licenses, prior to bidding in Auction 73. The commenter contends that this result is compelled by the § 1.2105(b)(2) of the Commission's competitive bidding rules, which prohibits changes in license selection after the initial application filing deadline. Moreover, the commenter contends that requiring applicants to select potential alternative licenses prior to Auction 73 will limit the amount of time required between Auction 73 and any contingent subsequent auction.

275. Given the presumption that Auction 73 and any contingent subsequent bidding on licenses should be treated as a single auction, the Bureau has concluded that applicants should select both licenses offered in Auction 73 and licenses that may be offered in Auction 76 by the initial deadline for filing an application to participate in Auction 73. The Bureau concluded that bidders will be able to make informed selections prior to Auction 73 of licenses, including alternative licenses that may be offered in contingent subsequent bidding. Bidders will have the opportunity to obtain additional bidding eligibility for licenses to be offered subsequently. These procedures will enable contingent subsequent bidding, if necessary, to proceed with minimal delay.

i. Bidder Status

276. To participate in Auction 76, a potential bidder must: (1) Have become qualified to bid for at least one license offered in Auction 73 by selecting license(s) offered in Auction 73 and making an upfront payment sufficient to establish eligibility to bid for at least one of those license(s), and (2) file an abbreviated Auction 76 application and selected at least one license offered in Auction 76. Qualified bidders in Auction 73 need not bid on the licenses offered in Auction 73 in order to be able to become qualified to participate in Auction 76.

ii. Auction 76 Initial Bidding Eligibility

277. For Auction 76, qualified bidders will have their initial bidding eligibility based on their initial bidding eligibility in Auction 73 and will also have an opportunity to purchase additional bidding eligibility. However, qualified bidders'' initial bidding eligibility for Auction 73 will be reduced for Auction 76 if they hold winning bids for any licenses offered in Auction 73 in blocks for which the reserve price was met in Auction 73. For winning bidders of licenses in the A, B, C, or E Blocks, the amount of the reduction will be equal to the number of bidding units associated with the licenses won. For the winning bidder of the D Block license, the amount of the reduction will be equal to the amount of any withdrawal payment owed for withdrawn bid(s) on the D

Block license plus the amount of the net winning bid for the D Block license, up to the amount of the winning bidder's initial Auction 73 bidding eligibility.

iii. Supplementing Upfront Payments To Obtain Additional Eligibility

278. All bidders qualified to participate in Auction 76 will have an opportunity to purchase additional bidding eligibility. Bidders will be able to purchase additional bidding eligibility for licenses to be offered in Auction 76 by supplementing their upfront payments pursuant to the procedures for making upfront payments by wire transfer set forth in the *Auction 73 and 76 Procedures Public Notice*, subject to a schedule to be announced following the close of bidding in Auction 73.

iv. Continuing Applicability of the Anti-Collusion Rule

279. In the *700 MHz Second Report and Order*, the Commission directed the Bureau to adopt any procedures that may enhance the effectiveness of an auction of licenses in Auction 73 or any contingent subsequent auction. In part, the Commission found that the Commission's anti-collusion rule should treat Auction 73 and any such subsequent auction as a single auction, given the related nature of the auctions. Accordingly, the applicable down payment deadline marking the end of the anti-collusion period for Auction 73 and any subsequent auction shall be the down payment deadline established following the close of the subsequent auction.

E. Bidding Procedures

i. Aggregate Reserve Prices

280. As required by the Commission, the licenses in subsequent bidding will be subject to the same aggregate reserve price(s) applicable in the initial auction. A commenter argues in its comments that the licenses in the second auction should not be subject to any reserve prices because using a reserve price in the contingent subsequent auction runs the risk that the licenses will not be awarded prior to the June 30, 2008, statutory deadline for filing auction proceeds. As a commenter acknowledges in its comments, the Commission decision in the *700 MHz Second Report and Order* is binding, absent reconsideration of that Order by the Commission as a whole. Consequently, the commenters proposal is beyond the scope of the present non-rulemaking auctions procedures process.

281. In the *700 MHz Second Report and Order,* the Commission noted that the Bureau has delegated authority to determine how to allocate the C Block reserve price upon auction of alternative licenses. Accordingly, in the *700 MHz Auction Comment Public Notice,* the Bureau proposed to apply the C Block aggregate reserve price of $4.637854 billion to all of the alternative C Block licenses. That is, the sum of the gross bid amounts on the C1 and C2 Block licenses must equal or exceed $4.637854 billion in order to meet the reserve price. No commenters addressed this proposal.

282. The Bureau adopts its proposal, with one additional feature. In the event that the sum of the gross bid amounts on the C1 and C2 Block licenses does not meet the reserve price 104 covering both blocks, the Bureau then will apportion the aggregate reserve price between the two blocks based on their respective bandwidth and apply those aggregate reserve prices to the respective blocks separately. More specifically, if the aggregate reserve price of $4.637854 billion covering both Blocks C1 and C2 is not met, the Commission nevertheless will assign licenses for the respective block based on the auction results if the gross bid amounts on the C 1 Block licenses exceed $2.529739 billion or the gross bid amounts on the C2 Block licenses exceed $2.108115 billion. Applying these separate aggregate reserve prices will increase the likelihood that licenses will be assigned for the respective blocks in the contingent subsequent auction, while continuing to apply the aggregate reserve price from the initial auction to each block in proportion to the megahertz in each block.

ii. Minimum Opening Bids

283. For Auction 76, the Bureau will calculate minimum opening bid amounts on a license-by-license basis using the same approach as in Auction 73, drawing on the Auction 66 prices that were bid on licenses for the exact same geographic areas. For any licenses that may be offered in Auction 76, including alternative C1 and C2 Block licenses, minimum opening bids are set forth in Attachment B of the *Auction 73 and 76 Procedures Public Notice.*

F. Additional Procedures

284. In the *700 MHz Auction Comment Public Notice,* pursuant to Commission direction, the Bureau sought comment on the possibility of denying bidding eligibility in a contingent subsequent auction based on bidder behavior in Auction 73, if that behavior appeared designed to thwart the assignment of licenses. Specifically, the Bureau proposed that bidders defaulting on winning bids in Auction 73 should be denied eligibility in any subsequent auction. The Bureau declines to restrict the circumstances under which it might deny bidding eligibility in a contingent subsequent auction to an otherwise qualified bidder. The Commission retains the authority to sanction bidders that are found to have violated the antitrust laws or the 105 Commission's rules in connection with competitive bidding by requiring forfeiture of any upfront payments, down payment or full bid amounts, and by prohibiting the bidders participation in future auctions. The Commission intends to make full use of this authority, including banning participation in a contingent subsequent auction, with respect to bidders that seek to thwart the assignment of licenses in Auction 73.

VI. Post-Auction Procedures

A. Considerations Relating to Certain Post-Auction Payment Rules

i. Apportioning Package Bids

285. In package bidding, when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that comprise the package. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known. For example, rules for calculating the amount of small business, new entrant, or tribal land bidding credits presume that the winning bid on the license is known. Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the rules assume that there are bid amounts for individual licenses. Accordingly, the Commission recently adopted a rule providing that, in advance of each auction with package bidding, the Commission shall establish a methodology for determining how to estimate the price or bid on an individual license included in a package of licenses.

286. The Bureau proposed to apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the number of bidding units for each license. Alternatively, the Bureau proposed to use the final round CPEs for each license to apportion package bids.

The Bureau sought comment on these proposals.

287. A commenter suggests that the Bureau use a measure more closely related to relative license values, such as minimum opening bid amounts, to apportion package bid amounts among the licenses in the package. The Bureau accepts the commenter's recommendation that relative license values be used to apportion package bids, but rather than use a pre-auction estimate of value such as minimum opening bids, the Bureau will use the final CPEs of the licenses in the package, as in its alternative proposal. Final CPEs will reflect relative prices as determined in Auction 73. Therefore, when regulatory calculations require individual license bid amounts, the Bureau will divide the package bid amount among the licenses comprising the package in proportion to the final round CPEs for the licenses.

ii. Interim Withdrawal Payment Percentage

288. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a license for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding license receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

289. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment. When it adopted the new rule, the Commission indicated that it would consider the nature of the service and the inventory of the licenses being offered when determining the level of the interim withdrawal payment in a particular auction.

290. In the *700 MHz Auction Public Notice,* the Bureau noted that the 700 MHz auction will offer licenses under several different geographic licensing schemes and bandwidth sizes, and it found that bidders may have a legitimate interest in using withdrawals to facilitate their efforts to aggregate licenses across potentially substitutable blocks of licenses not subject to package bidding. The Bureau also observed that the likely significant bid amounts for licenses in this auction (and resulting absolute value of withdrawal payments) will in themselves serve as a deterrent to unnecessary withdrawals. Therefore, the Bureau did not propose to set the interim bid withdrawal payment at the maximum rate of twenty percent. At the same time, the Bureau noted that a rate above the minimum three percent will help deter undesirable strategic use of withdrawals. Specifically, the Bureau proposed to establish an interim bid withdrawal payment of ten percent of the withdrawn bid in the 700 MHz auction and sought comment on this issue.

291. No commenters suggested any alternative to the Bureau's proposed percentage for interim withdrawal payments. For the reasons set forth above and in the *700 MHz Auction Public Notice,* the Bureau adopts its proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

iii. Additional Default Payment Percentage

292. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under § 1.2104(g)(2) of the Commission's rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

293. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. In non-package auctions, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered. In auctions with package bidding, the additional payment is set, pursuant to § 1.2104(g)(2)(ii), at 25 percent of the applicable bid. This higher level reflects the fact that a defaulted winning bid in an auction with package bidding may have affected which other bids were winning other licenses.

294. The Bureau proposed to establish an additional default payment of fifteen percent with respect to bids on licenses in Blocks A, B, D, and E, which are not subject to package bidding. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. Moreover, the Bureau concluded an additional default payment greater than ten percent, which the Commission has established in several recent auctions, is appropriate for the 700 MHz auction. Because no licenses in Blocks A, B, or E will be sold unless the aggregate reserve price for that block is met, bidders may have an additional incentive to bid on a license and later default (after determination that the reserve price has been met), in order to help ensure that the reserve price is met and other initial licenses in the block are assigned. The Bureau concluded that a higher additional default 109 payment will help deter such behavior. With respect to the D Block, for which there is a single nationwide license that will not be assigned unless the D Block reserve price is met, a default by the winning bidder will delay the especially time-sensitive process of establishing a public-private partnership for the provision of public safety services. Given the unusually large public interest benefits of timely licensing the D Block, the Bureau proposed to deter defaults by imposing a higher additional default payment in that block as well. Accordingly, it proposed an additional default payment of fifteen percent on licenses in the A, B, D, and E Blocks. The Bureau sought comment on this proposal. The Bureau stated that for licenses in the C Block, because they are subject to package bidding, the

additional default payment will be twenty-five percent as set forth in § 1.2104(g)(2)(ii). This additional default payment will apply to all bids for packages and for licenses that are subject to package bidding.

295. While no comments were filed in response to the *700 MHz Auction Public Notice* focused on the appropriate percentage for the additional default payments, a commenter proposed in its comments that the Commission impose no default penalty in connection with any defaults on a winning bid for the D Block license. The commenter's argument focused particularly on a scenario where the winning bidder is unable to negotiate a Network Sharing Agreement with the Public Safety Licensee, even while negotiating in good faith. Another commenter opposed this proposal in its reply because it runs counter to the Commission's decision in the *700 MHz Second Report and Order,* which held that [i]n the event that the long-form application filed by the winning bidder for the D Block license is denied, the winning bidder of the D Block licenses will be deemed to have defaulted * * * [and] it will be liable for the default payment set forth in the Commission's competitive bidding rules. Accordingly, the commenter's proposal is beyond the scope of the current non-rulemaking auction procedures process.

296. The Bureau adopts its proposal and sets the additional default payment percentage at fifteen percent of the defaulted bid for licenses in the A, B, D and E Blocks. Pursuant to existing Commission rules regarding licenses subject to package bidding, the additional default payment percentage will be twenty-five percent of the defaulted bid for licenses in the C Block. These percentages are appropriate to reduce the risk that bidders may default on their winning bids.

B. Down Payments

297. After bidding has ended in Auction 73 and Auction 76, the Commission will issue a public notice declaring the auction(s) closed and identifying winning bidders, down payments and final payments due. In addition, if the D Block bidding satisfies the reserve price and there is a winning bidder for the D Block license in Auction 73, the Commission will issue a public notice identifying the winning bidder, down payments and final payments due after bidding ends in Auction 73, even if Auction 76 will be held for licenses in any other block(s).

298. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for licenses offered in Auction 73 and Auction 76 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).

C. Final Payments

299. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.

D. Long-Form Application (FCC Form 601)

300. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for each license won through Auction 73 and/or Auction 76. Winning bidders that are small 111 businesses or very small businesses must demonstrate their eligibility for a small business or very small business bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

301. The *CSEA/Part 1 Report and Order,* 71 FR 6214, February 7, 2006, modified the procedure by which a consortium that is a winning bidder in Auction 73 and/or Auction 76 will apply for a license. In particular, (a) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s) and, in the case of a license to be partitioned or disaggregated, the member or group filing the applicable long-form application shall provide the parties' partitioning or disaggregation agreement in its long-form application; (b) two or more consortium members seeking to be licensed together shall first form a legal business entity; and (c) any such entity must meet the applicable eligibility requirements for small business status. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to understand how the members of the consortia will apply for a license in the event they are winning bidders.

E. Ownership Disclosure Information Report (FCC Form 602)

302. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112. An ownership disclosure record is automatically created in ULS for any applicant that submits an FCC Form 175. However, winning bidders will be required to review and confirm that it is complete and accurate as of the date of filing Form 601. Further instructions will be provided to winning bidders at the close of the auction.

F. Tribal Lands Bidding Credit

303. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

304. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after winning the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vi).

305. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions* and clicking on the Tribal Land Credits link.

G. Default and Disqualification

306. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments

described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

307. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *700 MHz Auction Public Notice,* the Bureau proposed to set the additional default payment for the auction of 700 MHz Band licenses at fifteen percent of the applicable bid with respect to bids on licenses in Blocks A, B, D, and E, which are not subject to package bidding. For licenses in the C Block, because they are subject to package bidding, the additional default payment will be twenty-five percent as set forth in § 1.2104(g)(2)(ii).

308. The Commission will apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the final round CPEs for the licenses. Accordingly, in the event that a winning bidder defaults on a package bid for C Block licenses and the licenses subsequently are won individually or in a different combination, the Bureau will apportion the defaulted package bid for the C Block licenses based on the ratio of the bidding units for the relevant licenses to the bidding units for the entire package.

309. The Bureau adopted its proposal and sets the additional default payment for the auction of 700 MHz Band licenses at fifteen percent of the applicable bid for licenses in Blocks A, B, D, and E and at twenty-five percent of the applicable bid for Block C packages and licenses.

310. Finally, the Bureau notes that in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

H. Refund of Remaining Upfront Payment Balance

311. The Commission received two sets of comments addressing the refund of upfront payments. One commenter urges that the Commission clarify that it will promptly refund upfront payments after the close of the initial auction, prior to Auction 76. It maintains that this would promote full participation in the auction. Another commenter advocates the adoption of procedures for the refund of upfront payments, and other deposits, after they are deposited in the Digital Television Transition and Public Safety Fund on June 30, 2008, pursuant to the DTV Act. The commenter argues that the lack of such procedures would discourage the participation of potential applicants.

312. The Commission concluded that Auction 73 and Auction 76 are a single auction event for purposes of the Commission's anti-collusion rule. Applicants in Auction 73 are prohibited from communicating bids or bidding strategies prior to the conclusion of Auction 76. Disclosing the activity of applicants in Auction 73 or Auction 76 by providing for refunds of upfront payments prior to the conclusion of Auction 76 would conflict with this conclusion. As a practical matter, the Bureau notes that applicants in any Commission auction must take into account the fact that the Commission's auctions are of indefinite duration. Thus, even if Auction 76 should not prove necessary, applicants cannot reasonably expect the return of funds by any specific date and therefore cannot reasonably require that funds be refunded immediately after the Commission announces that it will make alternative licenses available for Auction 76. Moreover, bidders in Auction 73 subject to any liabilities arising from Auction 73 may not have the extent of their liability determined prior to the close of Auction 76. For example a bidder that withdrew a provisionally winning bid in Auction 73 would be subject to a determination of the extent of its liability only after the conclusion of Auction 76. The Commission has never provided for refunds of upfront payments to such bidders. In the past, the Commission has provided for refunds of upfront payment to bidders that have no auction liabilities and no remaining bidding eligibility prior to the competition of an auction. Nevertheless, the Commission has not made any such refunds in auctions subject to anonymous bidding. For all of these reasons, the Bureau concluded that bidders reasonably should be required to maintain their upfront payments in Auction 73 and Auction 76 on deposit with the Commission until the conclusion of any contingent subsequent auction.

313. All upfront payments submitted by applicants in Auction 73 and all upfront payments submitted by Auction 73 qualified bidders in connection with Auction 76 may be available to be refunded after the conclusion of any contingent subsequent auction; subject to any required payments (i.e. winning bid, deficiency, withdrawal, and/or default payments). All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

314. Bidders are encouraged to file their refund information electronically using the Refund Information icon found on the *Auction Application Manager* page or through the Wire Transfer for Refund Purposes link available in various locations throughout the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant may send a written request for the refund, including wire transfer instructions and FCC Registration Number (FRN) by facsimile to the Auctions Accounting Group at (202) 418–2843 or by mail to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E7–21528 Filed 11–1–07; 8:45 am]

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Federal Register

Friday,
November 2, 2007

Part V

The President

Proclamation 8195—National Adoption Month, 2007

Proclamation 8196—National American Indian Heritage Month, 2007

Proclamation 8197—National Family Caregivers Month, 2007

Proclamation 8198—National Hospice Month, 2007

Proclamation 8199—Veterans Day, 2007

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Presidential Documents

Title 3—

The President

Proclamation 8195 of October 31, 2007

National Adoption Month, 2007

By the President of the United States of America

A Proclamation

During National Adoption Month, we recognize the adoptive and foster families who have shared their homes and hearts with children in need, and we encourage more Americans to consider adopting young people of all ages.

Families who adopt show the generous spirit of our Nation. Every child desires a permanent home, and when parents adopt a child to love as their own, lives are forever changed. For parents, the decision to adopt a child is among life's greatest and happiest turning points. On November 17, families across the country will celebrate National Adoption Day by finalizing their adoptions, and each one of these homes will be richer for the addition of new family members.

My Administration is committed to promoting adoption of children of all ages. We are working to bring together more children with loving, adoptive parents through the Collaboration to AdoptUsKids at adoptuskids.org and by providing States with financial assistance through the Adoption Incentives Program. The Promoting Safe and Stable Families Program helps improve care and services to children and families and ensure more young people in America have a caring, secure, and permanent home. Together, these efforts are building a brighter future for our youth.

During National Adoption Month, we honor adoptive and foster parents as they raise children of conviction and character. By accepting the gift of these children, parents are helping shape lives and contributing to the strength of our great Nation.

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 November 2007 as National Adoption Month. I call upon all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 07–5508
Filed 11–1–07; 9:38 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8196 of October 31, 2007

National American Indian Heritage Month, 2007

By the President of the United States of America

A Proclamation

National American Indian Heritage Month is an opportunity to honor the many contributions of American Indians and Alaska Natives and to recognize the strong and living traditions of the first people to call our land home.

American Indians and Alaska Natives continue to shape our Nation by preserving the heritage of their ancestors and by contributing to the rich diversity that is our country's strength. Their dedicated efforts to honor their proud heritage have helped others gain a deeper understanding of the vibrant and ancient customs of the Native American community. We also express our gratitude to the American Indians and Alaska Natives who serve in our Nation's military and work to extend the blessings of liberty around the world.

My Administration is committed to supporting the American Indian and Alaska Native cultures. In June, I signed the ''Native American Home Ownership Opportunity Act of 2007,'' which reauthorizes the Indian Housing Loan Guarantee Program, guaranteeing loans for home improvements and expanding home ownership for Native American families. Working with tribal governments, we will strive for greater security, healthier lifestyles, better schools, and new economic opportunities for American Indians and Alaska Natives.

During National American Indian Heritage Month, we underscore our commitment to working with tribes on a government-to-government basis and to supporting tribal sovereignty and self-determination. During this month, I also encourage Federal agencies to continue their work with tribal governments to ensure sound cooperation. Efforts such as on-line training programs will improve interagency collaboration in the Federal Indian Affairs community and help to strengthen relationships with tribes, building a brighter future for all our citizens.

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 November 2007 as National American Indian Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 07–5509
Filed 11–1–07; 9:38 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8197 of October 31, 2007

National Family Caregivers Month, 2007

By the President of the United States of America

A Proclamation

Each year during National Family Caregivers Month, we celebrate all those who dedicate themselves to caring for others and recognize their efforts to comfort and improve the lives of their loved ones in need.

One of our Nation's defining values is compassion, and we must do our best to see that every citizen is treated with dignity and respect. Family caregivers demonstrate this compassion, often at great sacrifice, to assist with everyday activities for family members who are elderly, chronically ill, or disabled. This dedication contributes to a culture of caring and responsibility across our country.

My Administration remains committed to supporting family caregivers by enhancing their access to services, agencies, and other providers. Late last year, I signed ''The Lifespan Respite Care Act of 2006,'' which establishes a program to assist family caregivers in accessing affordable and high-quality respite care. The National Family Caregiver Support Program encourages cooperation among agencies and other organizations that support and work with the family caregivers. This program offers information, training, and counseling to help family caregivers assist their loved ones.

National Family Caregivers Month is a time to recognize family caregivers for their good hearts and tireless support. Their love and devotion exemplify the true spirit of America.

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 November 2007 as National Family Caregivers Month. I encourage all Americans to honor the selfless service of caregivers who support their loved ones in need.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 07–5510
Filed 11–1–07; 9:38 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8198 of October 31, 2007

National Hospice Month, 2007

By the President of the United States of America

A Proclamation

One of America's greatest values is compassion, and our country is blessed by all those who dedicate themselves to caring for others. During National Hospice Month, we recognize the dedicated professionals and volunteers who provide love and comfort to those who are terminally ill.

Across our Nation, hospice physicians, nurses, counselors, and volunteers provide invaluable support that enables many of our citizens to spend their final days in comfort and dignity. By providing physical, psychological, and social assistance, hospice care workers help ensure their patients can spend valuable time with loved ones. Hospice caregivers also help by providing guidance and counseling to the families of those who are ill.

Our Nation is committed to helping ensure that citizens with terminal illness and their families receive the assistance they need. We believe in the dignity and worth of every person at every stage of life, and hospice care brings support and comfort to those in need.

Hospice care professionals and volunteers are answering a timeless call to love their neighbors as themselves. During National Hospice Month, we recognize these individuals for their strength and compassion. Their efforts make our country a more loving and caring place.

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 November 2007 as National Hospice Month. I encourage all Americans to observe this month with appropriate programs and activities. I also ask Americans to recognize our health care professionals and volunteers for their contributions to helping provide comfort and care to those facing terminal illness.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 07–5511
Filed 11–1–07; 9:38 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8199 of October 31, 2007

Veterans Day, 2007

By the President of the United States of America

A Proclamation

Throughout our history, America has been protected by patriots who cherished liberty and made great sacrifices to advance the cause of freedom. The brave members of the United States Armed Forces have answered the call to serve our Nation, ready to give all for their country. On Veterans Day, we honor these extraordinary Americans for their service and sacrifice, and we pay tribute to the legacy of freedom and peace that they have given our great Nation.

In times of war and of peace, our men and women in uniform stepped forward to defend their fellow citizens and the country they love. They shouldered great responsibility and lived up to the highest standards of duty and honor. Our veterans held fast against determined and ruthless enemies and helped save the world from tyranny and terror. They ensured that America remained what our founders meant her to be: a light to the nations, spreading the good news of human freedom to the darkest corners of the earth.

Like the heroes before them, today a new generation of men and women are fighting for freedom around the globe. Their determination, courage, and sacrifice are laying the foundation for a more secure and peaceful world.

Veterans Day is dedicated to the extraordinary Americans who protected our freedom in years past, and to those who protect it today. They represent the very best of our Nation. Every Soldier, Sailor, Airman, Marine, and Coast Guardsman has earned the lasting gratitude of the American people, and their service and sacrifice will be remembered forever. In the words of Abraham Lincoln: ‘‘ . . . let us strive on to finish the work we are in, to bind up the Nation’s wounds, to care for him who shall have borne the battle . . . .’’ On this Veterans Day, I ask all Americans to express their appreciation to our Nation’s veterans.

With respect for and in recognition of the contributions our service men and women have made to the cause of peace and freedom around the world, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor our Nation’s veterans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim November 11, 2007, as Veterans Day and urge all Americans to observe November 11 through November 17, 2007, as National Veterans Awareness Week. I encourage all Americans to recognize the valor and sacrifice of our veterans through ceremonies and prayers. I call upon Federal, State, and local officials to display the flag of the United States and to support and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first 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. 07–5512
Filed 11–1–07; 9:38 am]
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Federal Register

Friday,
November 2, 2007

Part VI

The President

Notice of November 1, 2007—Continuation of the National Emergency With Respect to Sudan

Federal Register
Vol. 72, No. 212
Friday, November 2, 2007

Presidential Documents

Title 3—

The President

Notice of November 1, 2007

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. On April 26, 2006, in Executive Order 13400, I determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency to deal with that threat, and ordered the blocking of property of certain persons connected to the conflict. On October 13, 2006, I issued Executive Order 13412 to take additional steps with respect to the national emergency and to implement the Darfur Peace and Accountability Act of 2006.

Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, as expanded on April 26, 2006, must continue in effect beyond November 3, 2007. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
November 1, 2007.

[FR Doc. 07–5528
Filed 11–1–07; 1:41 pm]
Billing code 3195–01–P

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 2, 2007

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Mississippi; published 10-3-07

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Executive branch regulations:

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Gulf of Mexico and South Atlantic coastal migratory pelagic resources; published 11-5-07

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Southwest Indiana; published 9-25-07

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AGRICULTURE DEPARTMENT

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COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Appomattox River, Hopewell, VA; comments due by 11-5-07; published 10-5-07 [FR E7-19676]

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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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3678/P.L. 110–108

Internet Tax Freedom Act Amendments Act of 2007 (Oct. 31, 2007; 121 Stat. 1024)

S. 2258/P.L. 110–109

Third Higher Education Extension Act of 2007 (Oct. 31, 2007; 121 Stat. 1028)

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