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

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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0075]

RIN 0579–AC46

Gypsy Moth Regulations; Updates and Clarifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the gypsy moth regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations. These actions will improve the clarity and consistency of the regulations while continuing to provide protection against the artificial spread of gypsy moth into noninfested areas of the United States.

EFFECTIVE DATE: January 14, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Gypsy Moth'' (7 CFR 301.45 through 301.45–12, referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas of States quarantined for gypsy moth in order to prevent the artificial spread of gypsy moth into noninfested areas of the United States.

On July 17, 2007, we published in the **Federal Register** (72 FR 39018–39021, Docket No. APHIS–2006–0075) a proposal [1] to amend the regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations.

We solicited comments concerning our proposal for 60 days ending September 17, 2007. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the gypsy moth regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations. These actions improve the clarity and consistency of the regulations, while continuing to provide protection against the artificial spread of gypsy moth into noninfested areas of the United States.

The gypsy moth is a pest of concern for the U.S. forest industry. Defoliation of trees by gypsy moths often results in the death of the trees, which leads to economic loss, changes in ecosystems and wildlife habitat, and disturbed water flow and water quality. Economic costs to the U.S. forest industry, in addition to the costs of timber losses and pest control, can also arise from trade reductions as importing countries impose protective restrictions on access to their markets for wood products. Gypsy moths are already causing losses in quarantined areas in the United States. Annual losses attributable to gypsy moths are estimated to be about $22 million.[2] Any spread of gypsy moth to noninfested areas could have a negative economic and environmental impact.

The Small Business Administration (SBA) has established size standards based on the North American Industry Classification System (NAICS) to determine and to classify which economic entities can be considered small entities. Entities potentially affected by our gypsy moth regulations include sawmills, pulp mills, nursery and tree production farms, and nursery and garden centers that are involved in the interstate movement of Christmas trees, nursery products, household products, and bark and bark products from gypsy moth generally infested areas. Any effects on these entities resulting from these updates to the regulations would be positive.

The SBA classifies nursery and tree production (floriculture, nursery, Christmas trees, etc.) farms (NAICS code 111421) as small if their annual receipts are not more than $750,000.[3] Sawmills (NAICS code 321113) are regarded as small if they employ 500 or fewer employees, and pulp mills (NAICS code 322110) are small if they employ 750 or fewer employees. Nursery and garden centers (NAICS code 444220) are considered small if their annual sales are less than $6.5 million. In 2002, the most recent year for which data are available, there were 17,300 nursery and tree production farms, 1,215 sawmills, 7 pulp mills, and 4,093 nursery and garden centers in generally infested areas of the United States.[4] Approximately 93 percent of all these entities are considered to be small under the SBA's standards. Although the majority of these establishments are small entities, any economic effect resulting from the changes in this rule would be negligible. The changes in this final rule will not impose additional restrictions or requirements; rather, they will help ensure that the existing regulations are as up to date, clear, consistent, and as flexible as possible.

Under these circumstances, the Administrator of the Animal and Plant

[1] To view the proposed rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0075.*

[2] David Pimentel, Lori Latch, Rodolfo Zuniga, and Doug Morrison, ''Environmental and Economic Costs Associated with Non-indigenous Species in the United States,'' College of Agriculture and Life Sciences, Cornell University, Ithaca, NY 14850–0901, June 12, 1999.

[3] SBA, Small Business Size Standards matched to North American Industry Classification System 2002, Effective January 2006 (*http://www.sba.gov/size/sizetable2002.html*).

[4] U.S. Census Bureau, 2002 Economic Census Geographic Area Series: Manufacturing and Wholesale Trade, Revised January 2006 (*http://www.census.gov/prod/ec02/ec0231sq1t.pdf*). Information on the number of sawmills, pulp mills, and nursery and garden centers is available at the State level only. County information is withheld to avoid disclosing data for individual establishments. This may result in an overestimate of the number of affected entities because not all counties within quarantined States are in generally infested areas.

Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.45–1 is amended as follows:

■ a. By adding a definition of *OHA document*, and by revising the definitions of *certificate*, *compliance agreement*, and *limited permit* to read as set forth below.

■ b. In the definition of *inspector*, by adding a new second sentence to read as set forth below.

■ c. In the definition of *qualified certified applicator*, by removing the citation ''86 Stat. 983; 7 U.S.C. 136b'' and adding the citation ''7 U.S.C. 136i'' in its place, by adding the word ''use'' before the word ''pesticides'', and by revising footnote 1 to read as set forth below.

■ d. In the definition of *treatment manual*, by revising footnote 2 to read as set forth below.

§ 301.45–1 Definitions.

* * * * *

Certificate. A Plant Protection and Quarantine-approved form, stamp, or document issued and signed by an inspector, or by a qualified certified applicator or by any other person operating in accordance with a compliance agreement, affirming that a specified regulated article is eligible for interstate movement in accordance with this subpart.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

* * * * *

Inspector. * * * A person operating under a compliance agreement is not an inspector.

* * * * *

Limited permit. A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.45–5 only to the specified destination and only in accordance with the specified conditions.

* * * * *

OHA document. The self-inspection checklist portion of USDA–APHIS Program Aid Number 1329, ''Don't Move Gypsy Moth,'' completed and signed by the owner of an outdoor household article (OHA) affirming that the owner has inspected the OHA for life stages of gypsy moth in accordance with the procedures in the program aid.

* * * * *

Qualified certified applicator. * * * [1]

[1] Names of qualified certified applicators may be obtained from State departments of agriculture.

* * * * *

Treatment manual. * * * [2]

[2] The Gypsy Moth Program Manual may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/manuals/online_manuals.html.*

* * * * *

■ 3. In § 301.45–2, paragraph (a)(1) is revised to read as follows:

§ 301.45–2 Authorization to designate and terminate designation of generally infested areas.

(a) * * *

(1) The area is subject to a gypsy moth eradication program conducted by the Federal government or a State government in accordance with the Eradication, Suppression, and Slow the Spread alternative of the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects that was filed with the United States Environmental Protection Agency on January 16, 1996; and,

* * * * *

■ 4. In § 301.45–4, paragraph (b) is amended by revising the last sentence to read as follows:

§ 301.45–4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.

* * * * *

(b) * * * The articles must be safeguarded by a covering adequate to prevent access by any gypsy moth life stages.

* * * * *

■ 5. In § 301.45–7, a new sentence is added after the last sentence to read as follows:

§ 301.45–7 Assembly and inspection of regulated articles and outdoor household articles.

* * * An owner who wants to move outdoor household articles interstate may self-inspect the articles and issue an OHA document in accordance with § 301.45–5(e).

§ 301.45–8 [Amended]

■ 6. In § 301.45–8, paragraph (c) is amended by removing the words ''officer in charge'' and adding the words ''State Plant Health Director'' in their place.

■ 7. Section 301.45–12 is amended as follows:

■ a. By revising paragraph (a)(1) to read as set forth below.

■ b. In paragraph (a)(2), by removing the word ''; or,'' from the end of the sentence and adding the words ''or with stipulations agreed on in the compliance agreement between the certified applicator and the Administrator.'' in its place.

■ c. By removing paragraph (a)(3).

§ 301.45–12 Disqualification of qualified certified applicator to issue certificates.

(a) * * *

(1) Such person is not certified by a State and/or the Federal government as a commercial certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136i) in a category allowing the application of restricted use pesticides.

* * * * *

Done in Washington, DC, this 7th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24176 Filed 12–12–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 130 and 156

[Docket No. APHIS–2006–0028]

RIN 0579–AC44

User Fees; Updates and Clarifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our Agricultural Quarantine and Inspection Services user fee regulations to update an address that appears in several places. We are also making several nonsubstantive changes to the Veterinary Services user fee regulations to correct errors and to clarify the services covered by certain existing user fees. These changes, which do not affect any existing fees, are necessary to ensure that the user fee regulations are up to date and to ensure their clarity.

EFFECTIVE DATE: January 14, 2008.

FOR FURTHER INFORMATION CONTACT: Mrs. Kris Caraher, User Fees Section Head, Financial Services Branch, Financial Management Division, MRBPS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 2007, we published in the **Federal Register** (72 FR 39025–39028, Docket No. APHIS–2006–0028) a proposal [1] to amend our Agricultural Quarantine and Inspection (AQI) Services user fee regulations contained in 7 CFR part 354 to update an address that appears in several places. We also proposed several nonsubstantive changes to the Veterinary Services user fee regulations contained in 9 CFR part 130 to correct errors and to clarify the services covered by certain existing user fees. Finally, we proposed to remove all references to cooperative agreements in 9 CFR part 156 because the export product endorsement and inspection services formerly covered by those agreements are now covered by user fees in 9 CFR part 130. These changes, which do not affect any existing fees, are necessary to ensure that the user fee regulations are up to date and to ensure their clarity.

We solicited comments concerning our proposal for 60 days ending September 17, 2007. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends our AQI user fee regulations by updating an address that appears in several places. We also make several nonsubstantive changes to the Veterinary Services user fee regulations to correct errors and to clarify existing user fee services. The changes to the regulations are administrative in nature and do not result in any new fees being charged or any additional entities becoming subject to user fees.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

9 CFR Part 156

Exports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 130 and 156 as follows:

TITLE 7—[AMENDED]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

§ 354.3 [Amended]

■ 2. In § 354.3, paragraphs (d)(4) introductory text, (d)(5), (d)(6), (e)(3)(i), (e)(3)(ii), (e)(4), (f)(5)(i), (f)(5)(ii), (f)(5)(iii), (f)(6), and (f)(7), the words ''Box 952181, St. Louis, MO 63195–2181'' are removed and the words ''Box 979044, St. Louis, MO 63197–9000'' are added in their place.

TITLE 9—[AMENDED]

PART 130—USER FEES

■ 3. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.2 [Amended]

■ 4. In § 130.2, paragraph (a), the first sentence is amended by adding the words ''for any service rendered by an APHIS representative'' after the word ''fees''.

§ 130.3 [Amended]

■ 5. In § 130.3, paragraph (c)(3) is amended by removing the words ''for those services'' and adding the words ''for any service rendered by an APHIS representative'' in their place.

[1] To view the proposed rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0028.*

§ 130.4 [Amended]

■ 6. In § 130.4, the first sentence of the section is amended by adding the words ''for any service rendered by an APHIS representative'' after the word ''fees'', and the sentence ''These fees are nonrefundable.'' is added after the second sentence.

§ 130.5 [Amended]

■ 7. In § 130.5, paragraph (a), the first sentence is amended by adding the words ''for any service rendered by an APHIS representative'' after the word ''fees''.

§ 130.6 [Amended]

■ 8. In § 130.6, paragraph (a), the first sentence is amended by adding the words ''for any service rendered by an APHIS representative'' after the word ''fees''.

■ 9. Section 130.7 is amended as follows:

■ a. In paragraph (a), first sentence, by adding the words ''for any service rendered by an APHIS representative'' after the word ''fees''.

■ b. By adding paragraph (b) to read as set forth below.

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

* * * * *

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

* * * * *

§ 130.8 [Amended]

■ 10. In § 130.8, paragraph (a), the first sentence is amended by adding the words ''for any service rendered by an APHIS representative'' after the word ''fees''.

§ 130.11 [Amended]

■ 11. In § 130.11, paragraph (a) is amended by adding the sentence ''These user fees do not apply to inspection activities covered in § 130.30(a)(2).'' after the last sentence.

■ 12. In § 130.20, paragraph (b)(1) is amended by adding footnote 1 in the table heading and by revising in the table the entry for ''Nonslaughter horses to Canada'' to read as follows:

§ 130.20 User fees for endorsing export certificates.

* * * * *

(b)(1) * * *

Number [1] of tests or vaccinations and number of animals or birds on the certificate	User fee beginning Oct. 1, 2003
* * * * * * *	
Nonslaughter horses to Canada:	
First horse	$38.00
Each additional horse	4.25
* * * * * * *	

[1] Rabies vaccinations are not included in this number.

* * * * *

■ 13. Section 130.30 is amended as follows:

■ a. In the introductory text of paragraph (a), by removing the words ''through (a)(13)'' and adding the words ''through (a)(18)'' in their place.

■ b. Paragraph (a)(2) is revised to read as set forth below.

■ c. In paragraph (a)(4), by adding the words '', such as monitoring birds—including but not limited to pet birds—between flights'' after the word ''quarantine''.

■ d. Paragraph (a)(13) is redesignated as paragraph (a)(18), and new paragraphs (a)(13), (a)(14), (a)(15), (a)(16), and (a)(17) are added to read as set forth below.

§ 130.30 Hourly rate and minimum user fees.

(a) * * *

* * * * *

(2) Conducting inspections, including inspections of laboratories and facilities (such as biosecurity level two facilities), required either to obtain import permits for animal products, aquaculture products, or organisms or vectors, or to maintain compliance with import permits. This hourly rate does not apply to inspection activities covered in § 130.11.

* * * * *

(13) Import or entry services for feeder animals including, but not limited to, feeder goats and feeder bison not covered by a flat rate user fee in § 130.7.

(14) Export-related bird banding for identification.

(15) Export-related inspection and approval of pet food facilities, including laboratories that perform pet food testing.

(16) Export-related services provided at animal auctions.

(17) Various export-related facility inspections, including, but not limited to, fertilizer plants that utilize poultry waste, rendering plants, and potential embarkation facilities.

* * * * *

PART 156—VOLUNTARY INSPECTION AND CERTIFICATION SERVICE

■ 14. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624; 21 U.S.C. 136a; 7 CFR 2.22, 2.80, and 371.4.

§ 156.2 [Amended]

■ 15. Section 156.2 is amended as follows:

■ a. By removing the definition of *cooperative agreement*.

■ b. In the definition of *inspector*, by removing the words ''under a cooperative agreement''.

§ 156.4 [Amended]

■ 16. Section 156.4 is amended by removing the words ''under a cooperative agreement''.

§ 156.5 [Amended]

■ 17. Section 156.5 is amended by removing the words ''service is to be furnished under a cooperative agreement;'' and adding the words ''the requirements of part 130 of this title are met;'' in their place.

■ 18. Section 156.7 is revised to read as follows:

§ 156.7 User fees under 9 CFR part 130.

User fees under part 130 of this chapter for service (including travel and other expenses incurred in connection with the furnishing of service) under this part shall be paid by the applicant. If required by the Administrator, the user fees under part 130 of this chapter

shall be paid in advance. Since the user fees under part 130 of this chapter are for the purpose of reimbursing the Department for all costs incurred in connection with the furnishing of service under this part, the appropriate user fees under part 130 of this chapter to cover any such costs shall be paid even if service is withheld pursuant to § 156.8.

Done in Washington, DC, this 7th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24177 Filed 12–12–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28601; Airspace Docket No. 07–AEA–02]

Establishment of Class D and E Airspace, Revision of Class E Airspace; Easton, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D, E2 and E4 airspace at Easton, MD to provide adequate airspace that will support the new Air Traffic Control Tower constructed at Easton Airport/Newnam Field. Increased safety and airspace management is enhanced through this rule by providing controlled airspace for Instrument Approaches and Instrument and Visual Flight Rule operations. This action also amends Class E5 airspace at Easton, MD by imparting a technical correction to the airport's name.

DATES: Effective 0901 UTC, February 14, 2008. 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: Daryl Daniels, Air Traffic Control Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

History

On September 6, 2007, the FAA published in the **Federal Register** an NPRM to establish Class D, E2, and E4 airspace and amend Class E5 airspace at Easton, MD (72 FR 51203). Due to the volume and mix of aircraft operating at the airport, an Air Traffic Control Tower has been built with weather reporting capabilities at Easton Airport/Newnam Field which meets the criteria for Class D and E4 surface area airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D surface airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. Additionally, the Potomac Tracon receives the weather information and has the ability to communicate with aircraft on the ground at the airport, thus meeting the criteria for Class E2 airspace. Class E2 surface area airspace is required for safety reasons when the control tower is closed to contain SIAPs and other IFR operations at the airport. This action establishes that airspace.

On May 25, 1993, the County Council of Talbot County voted to officially change the name of the Easton Municipal Airport to Easton Airport/Newnam Field honoring Mr. William S.D. Newnam, having served the county and the airport for forty years. That change was never completely forwarded to the proper authorities. This action corrects that oversight.

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 amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class D Airspace extending upwards from the surface to and including 2,600 feet MSL within a 4.0-mile radius of the airport, Class E4 Airspace extension to Class D that is 5.4 miles wide and extends 7.4 miles northeast of the Easton Non Directional Beacon (NDB) and Class E2 airspace whose dimensions include both. This amendment also revises Class E5 Airspace to correctly identify the airports' name as Easton Airport/Newnam Field at Easton, MD.

Class D and E2 Airspace Designations for Airspace Areas extending upward from the surface of the Earth, Class E4 Airspace Areas Designated as an Extension to a Class D Surface Area and Class E5 Airspace Areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraphs 5000, 6002, 6004 and 6005 respectively of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D and E Airspae designations listed in this document will be published subsequently in the Order.

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. 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 the Easton Airport/Newnam Field, Easton, MD.

Lists 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 5000 Class D Airspace.

* * * * *

AEA MD D Easton, MD [NEW]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.0-mile radius of the Easton Airport/Newnam Field. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA MD E2 Easton, MD [NEW]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)
Easton NDB
(Lat. 38°48′17″ N., long. 76°04′10″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.0-mile radius of the Easton Airport/Newnam Field and that airspace within 2.7 miles each side of the 038° bearing from the Easton NDB extending from the 4.0 mile radius of the Easton Airport/Newnam Field to 7.4 miles northeast of the NDB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AEA MD E4 Easton, MD [NEW]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)
Easton NDB
(Lat. 38°48′17″ N., long. 76°04′10″ W.)

That airspace extending upward from the surface within 2.7 miles each side of the 038° bearing from the Easton NDB extending from the 4.0-mile radius of the Easton Airport/Newnam Field to 7.4 miles northeast of the NDB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AEA MD E5 Easton, MD [REVISED]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)
Easton NDB
(Lat. 38°48′17″ N., long. 76°04′10″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.7-mile radius of the Easton Airport/Newnam Field and within 2.7 miles each side of the 038° bearing from the Easton NDB extending from the 6.7-mile radius to 7.4 miles northeast of the NDB.

* * * * *

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

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–6019 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0165; Airspace Docket No. 07–AEA–11]

Establishment of Class E Airspace; Montrose, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace near the High School at Montrose, PA. Controlled airspace 700 feet above the surface of the Earth is required to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing the required controlled airspace to protect for this approach at Montrose, PA.

DATES: Effective 0901 UTC, February 14, 2008. 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 January 28, 2008.

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–2007–0165; Airspace Docket No. 07–AEA–11, at the beginning of your comments. You may also submit and review received 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, 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 rule 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. An electronic copy of this document may be downloaded from *http://www.regulations.gov.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. 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–2007–0165; Airspace Docket No. 07–AEA–11.'' 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 establishes Class E5 airspace at Montrose, PA providing the controlled airspace required to support the new Copter RNAV (GPS) 015 Point in Space (PinS) approach developed for a landing spot at the Montrose High School. No Class E airspace exists in the area so new airspace must be developed which will serve medical helicopter flights. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass all IAPs and for IFR operations, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 airspace at Montrose, PA. 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 part 71.1. The Class E designations listed in this documents 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, therefor, (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 ahve 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 Stated Code. Subtitle I, Section 106 described 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 Class E5 controlled airspace near the Montrose High School in Montrose, PA.

Lists 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 Montrose, PA [NEW]

Montrose High School
(Lat. 41°50′36″ N., long. 75°50′33″ W.)
Point in Space Coordinates
(Lat. 41°50′08″ N., long. 75°51′10″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the point in space coordinates (lat. 41°50′08″ N., long. 75°51′10″ W.) serving the Montrose High School.

* * * * *

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

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–6018 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0153; Airspace Docket No. 07–AEA–12]

Establishment of Class E Airspace; Honesdale, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes additional Class E Airspace at Honesdale, PA. The existing controlled airspace does not adequately support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations. This action will enhance the safety and management of Instrument Flight Rule (IFR) operations by providing the required controlled airspace to protect for this approach around Honesdale, PA.

DATES: Effective 0901 UTC, February 14, 2008. 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 January 10, 2008.

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–2007–0153; Airspace Docket No. 07–AEA–12, at the beginning of your comments. You may also submit and review received 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, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 395–5581.

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 rule only involves and 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. An electronic copy of this document may be downloaded from *http://www.regulations.gov.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. 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–2007–0153; Airspace Docket No. 07–AEA–12'' 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 establishes Class E airspace at Honesdale, PA providing the controlled airspace required to support the new Copter RNAV (GPS) 250 Point in Space (PinS) approach developed for the Honesdale Sports Complex Heliport. Although Class E airspace exists in the area, it is insufficient for this approach which will serve medical flights. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass all IAPs and for IFR operations, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR—part 71 to amend the Class E5 airspace at Honesdale, PA. 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 part 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 that authority as it establishes and amends controlled airspace near the Honesdale Sports Complex Heliport in Honesdale, PA.

Lists 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 Honesdale, PA [REVISED]

Cherry Ridge Airport, Honesdale, PA
(Lat. 41°30′55″ N., long 75°15′05″ W.)
Spring Hill Airport, Sterling, PA
(Lat. 41°20′50″ N., long. 75°24′57″ W.)
Wilkes-Barre VORTAC
(Lat. 41°16′22″ N., long. 75°41′22″ W.)
Honesdale Sports Complex Heliport (Point in Space Coordinates)
(Lat. 41°34′11″ N., long. 75°14′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Cherry Ridge Airport and within 4.4 miles each side of the Wilkes-Barre VORTAC 054° radial extending from the 6.3-mile radius to 8.7 miles northeast of the VORTAC, that airspace within a 6-mile radius of Spring Hill Airport and that airspace within a 6-mile radius of the point in space coordinates serving the Honesdale Sports Complex Heliport.

* * * * *

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

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–6017 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30584; Amdt. No. 3248]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes in the National Airspace System, such as the commissioning of new navigational facilities, adding of new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 13, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2007.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes

contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on November 30, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
11/19/07	NY	Syracuse	Syracuse Hancock Intl	7/4502	ILS Rwy 28 (Cat I, II), Amdt 33A.
11/22/07	TN	Springfield, Robertson County.	Springfield	7/4564	RNAV (GPS) Rwy 4, Orig.
11/27/07	CA	Beckworth	Nervino	7/5394	RNAV (GPS) Y Rwy 25, Orig-A.

[FR Doc. E7–23826 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30583; Amdt. No. 3247]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 13, 2007. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry. J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on November 30, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 17 Jan. 2008

Bardstown, KY, Samuels Field, VOR/DME–A, Orig-A

Effective 14 Feb. 2008

St Elmo, AL, St Elmo, Takeoff Minimums and Obstacle DP, Orig
Anchorage, AK, Merrill Field, RNAV (GPS)–A, Orig
Anchorage, AK, Merrill Field, GPS–A, Orig-A, CANCELLED
Glendale, AZ, Glendale Muni, RNAV (GPS) RWY 1, Orig
Cortez, CO, Cortez Muni, RNAV (GPS) Y RWY 21, Orig-B
Jekyll Island, GA, Jekyll Island, Takeoff Minimums and Obstacle DP, Orig
Cahokia/St Louis, IL, St Louis Downtown, ILS OR LOC RWY 30L, Amdt 9
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 10, Amdt 15A
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 27L, Amdt 27A, ILS RWY 27L (CAT II), ILS RWY 27L (CAT III)
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 28, Amdt 14A, ILS RWY 28 (CAT II), ILS RWY 28 (CAT III)
Indianapolis, IN, Indianapolis Downtown Heliport, COPTER RNAV (GPS) 291, Orig
Indianapolis, IN, Indianapolis Downtown Heliport, COPTER VOR/DME 287, Amdt 2
Indianapolis, IN, Indianapolis Downtown Heliport, COPTER GPS 291, Orig, CANCELLED
Georgetown, KY, Georgetown Scott County-Marshall Fld, Takeoff Minimums and Obstacle DP, Orig
Madisonville, KY, Madisonville Muni, Takeoff Minimums and Obstacle DP, Orig
Pascagoula, MS, Trent Lott Intl, ILS OR LOC RWY 17, Amdt 1A
Clemson, SC, Oconee County Rgnl, RNAV (GPS) RWY 7, Amdt 1A
Clemson, SC, Oconee County Rgnl, RNAV (GPS) RWY 25, Amdt 1A
Nashville, TN, Nashville Intl, ILS OR LOC RWY 31, Amdt 8A
Culpeper, VA, Culpeper Regional, VOR–A, Amdt 5
Oak Harbor, WA, Wes Lupien, RNAV (GPS) RWY 7, Amdt 2
Oak Harbor, WA, Wes Lupien, RADAR–1, Amdt 1
Renton, WA, Renton Muni, Takeoff Minimums and Obstacle DP, Amdt 6
Shell Lake, WI, Shell Lake Muni, RNAV (GPS) RWY 14, Orig
Shell Lake, WI, Shell Lake Muni, RNAV (GPS) RWY 32, Orig
Shell Lake, WI, Shell Lake Muni, GPS RWY 32, Orig, CANCELLED

Shell Lake, WI, Shell Lake Muni, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. E7–23840 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pennfield Oil Co. that provides for a zero-day preslaughter withdrawal time following use of oxytetracycline in turkey and swine feed.

DATES: This rule is effective December 13, 2007.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, filed a supplement to NADA 138–938 for PENNOX (oxytetracycline) Type A medicated articles used for making medicated feeds for the treatment of various bacterial diseases of livestock and fish. The supplemental NADA provides for a zero-day withdrawal time prior to slaughter when Type C medicated feeds containing oxytetracycline are fed to turkeys or swine and for minor label revisions. The supplemental application is approved as of November 26, 2007, and the regulations are amended in 21 CFR 558.450 to reflect the approval, an editorial change, and a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.450, revise paragraphs (a)(1), (a)(2), (b)(3), and (d) to read as follows:

§ 558.450 Oxytetracycline.

(a) * * *

(1) 10, 20, 30, 50, 100, and 200 grams per pound to No. 066104 in § 510.600(c) of this chapter.

(2) 50, 100, and 200 grams per pound to No. 048164 in § 510.600(c) of this chapter.

(b) * * *

(3) 50-, 100-, and 200-gram per pound articles in paragraph (a)(2) of this section contain oxytetracycline dihydrate expressed in terms of an equivalent amount of oxytetracycline hydrochloride. Another 100-gram per pound article in paragraph (a)(2) of this section contains oxytetracycline hydrochloride.

* * * * *

(d) *Conditions of use*—(1) *Chickens*—

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(i) 10 to 50 grams per ton (g/ton)	Chickens: For increased rate of weight gain and improved feed efficiency.	Feed continuously; do not feed to chickens producing eggs for human consumption.	066104, 048164
(ii) 100 to 200 g/ton	Chickens: For control of infectious synovitis caused by *Mycoplasma synoviae* and control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days (d); do not feed to chickens producing eggs for human consumption; in low calcium feeds, withdraw 3 d before slaughter.	066104, 048164
(iii) 400 g/ton	Chickens: For control of chronic respiratory disease (CRD) and air sac infection caused by *Mycoplasma gallisepticum* and *Escherichia coli* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; do not feed to chickens producing eggs for human consumption; in low calcium feeds, withdraw 3 d before slaughter.	066104, 048164
(iv) 500 g/ton	Chickens: For reduction of mortality due to air sacculitis (air sac infection) caused by *E. coli* susceptible to oxytetracycline.	Feed continuously for 5 d; do not feed to chickens producing eggs for human consumption; withdraw 24 hours before slaughter; in low calcium feeds, withdraw 3 d before slaughter.	066104, 048164

(2) *Turkeys*—

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(i) 10 to 50 g/ton	Growing turkeys: For increased rate of weight gain and improved feed efficiency.	Feed continuously; do not feed to turkeys producing eggs for human consumption.	066104, 048164

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(ii) 100 g/ton	Turkeys: For control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; do not feed to turkeys producing eggs for human consumption.	066104, 048164
(iii) 200 g/ton	Turkeys: For control of infectious synovitis caused by *M. synoviae* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; for No. 066104 withdraw 5 d before slaughter; for No. 048164 zero-day withdrawal time; do not feed to turkeys producing eggs for human consumption.	066104, 048164
(iv) 25 milligrams/pound (mg/lb) of body weight daily	Turkeys: For control of complicating bacterial organisms associated with bluecomb (transmissible enteritis; coronaviral enteritis) susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; for No. 066104 withdraw 5 d before slaughter; for No. 048164 zero-day withdrawal time; do not feed to turkeys producing eggs for human consumption.	066104, 048164

(3) *Swine*—

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(i) 10 to 50 g/ton	Swine: For increased rate of weight gain and improved feed efficiency.	Feed continuously.	066104, 048164
(ii) 10 mg/lb of body weight daily	1. Swine: For treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* susceptible to oxytetracycline and treatment of bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d.	066104, 048164
	2. Breeding swine: For control and treatment of leptospirosis (reducing the incidence of abortion and shedding of leptospirae) caused by *Leptospira pomona* susceptible to oxytetracycline.	Feed continuously for 14 d.	066104, 048164

(4) *Cattle*—

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(i) 0.05 to 0.1 mg/lb of body weight daily	Calves (up to 250 lb): For increased rate of weight gain and improved feed efficiency.	Feed continuously in milk replacer or starter feed.	066104, 048164
(ii) 10 mg/lb of body weight daily	1. Calves and beef and nonlactating dairy cattle: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; for No. 048164, withdraw 5 d before slaughter; for No. 066104, zero-day withdrawal time.	066104, 048164
	2. Calves: For treatment of bacterial enteritis caused by *E. coli* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d in milk replacer or starter feed; for No. 048164, withdraw 5 d before slaughter; for No. 066104, zero-day withdrawal time.	066104, 048164
(iii) 25 mg/head/day	Calves (250 to 400 lb): For increased rate of weight gain and improved feed efficiency.	Feed continuously.	066104, 048164
(iv) 75 mg/head/day	Growing cattle (over 400 lb): For increased rate of weight gain, improved feed efficiency, and reduction of liver condemnation due to liver abscesses.	Feed continuously.	066104, 048164
(v) 0.5 to 2.0 g/head/day	Cattle: For prevention and treatment of the early stages of shipping fever complex.	Feed 3 to 5 d before and after arrival in feedlots.	066104, 048164

(5) *Minor species*—

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(i) 10 to 20 g/ton	Sheep: For increased rate of weight gain and improved feed efficiency.	Feed continuously.	066104, 048164

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(ii) 10 mg/lb of body weight daily	Sheep: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 d; withdraw 5 d before slaughter.	066104, 048164
(iii) 200 mg/colony	Honey bees: For control of American foulbrood caused by *Paenibacillus larvae* and European foulbrood caused by *Streptococcus pluton* susceptible to oxytetracycline.	Remove at least 6 weeks prior to main honey flow.	066104, 048164
(iv) 250 mg/kilogram of fish/day (11.35 g/100 lb of fish/day)	Pacific salmon: For marking of skeletal tissue.	For salmon not over 30 g body weight; administer as sole ration for 4 consecutive days; fish not to be liberated for at least 7 d following the last administration of medicated feed.	066104
(v) 2.5 to 3.75 g/100 lb of fish/day	1. Salmonids: For control of ulcer disease caused by *Hemophilus piscium*, furunculosis caused by *Aeromonas salmonicida*, bacterial hemorrhagic septicemia caused by *A. liquefaciens*, and pseudomonas disease. 2. Catfish: For control of bacterial hemorrhagic septicemia caused by *A. liquefaciens* and pseudomonas disease.	Administer in mixed ration for 10 d; do not liberate fish or slaughter fish for food for 21 d following the last administration of medicated feed; do not administer when water temperature is below 9 °C (48.2 °F). Administer in mixed ration for 10 d; do not liberate fish or slaughter fish for food for 21 d following the last administration of medicated feed; do not administer when water temperature is below 16.7 °C (62 °F).	066104 066104
(vi) 1 g/lb of medicated feed	Lobsters: For control of gaffkemia caused by *Aerococcus viridans*.	Administer as sole ration for 5 consecutive days; withdraw medicated feed 30 d before harvesting lobsters.	066104

(6) Oxytetracycline may be used in accordance with the provisions of this section in the combinations as follows:

(i) Carbadox as in § 558.115.

(ii) Lasalocid as in § 558.311.

(iii) Melengestrol acetate as in § 558.342.

(iv) Robenidine hydrochloride as in § 558.515.

(v) Salinomycin as in § 558.550.

Dated: December 5, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–24146 Filed 12–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Ractopamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for an increased level of monensin in three-way combination Type C medicated feeds containing ractopamine, melengestrol, and monensin for heifers fed in confinement for slaughter.

DATES: This rule is effective December 13, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, e-mail: *daniel.benz@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–234 that provides for use of OPTAFLEXX (ractopamine hydrochloride), MGA (melengestrol acetate), and RUMENSIN (monensin USP) Type A medicated articles to make dry and liquid three-way combination Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for suppression of estrus (heat) in heifers fed in confinement for slaughter during the last 28 to 42 days on feed. The supplemental NADA provides for an increased level of monensin. The supplemental NADA is approved as of November 20, 2007, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.500, in the table in paragraph (e)(2), revise paragraph (e)(2)(viii) and add paragraph (e)(2)(xii) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(2) * * *

Ractopamine grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(viii) 9.8 to 24.6	Monensin 10 to 40 to provide 0.14 to 0.42 mg monensin/lb of body weight, depending on severity of coccidiosis challenge, up to 480 mg/head/day, plus melengestrol acetate to provide 0.25 to 0.5 mg/head/day	Heifers fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for suppression of estrus (heat).	As in paragraph (e)(2)(vi) of this section; see §§ 558.342(d) and 558.355(d) of this chapter. Melengestrol acetate as provided by No. 000009 in § 510.600(c) of this chapter.	000986
*	*	*	*	*
(xii) 9.8 to 24.6	Monensin 10 to 30, plus melengestrol acetate to provide 0.25 to 0.5 mg/head/day	Heifers fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for suppression of estrus (heat).	As in paragraph (e)(2)(vi) of this section; see §§ 558.342(d) and 558.355(d) of this chapter. Melengestrol acetate as provided by No. 021641 in § 510.600(c) of this chapter.	021641

Dated: December 5, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–24145 Filed 12–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 127

[Public Notice: 6024]

Voluntary Disclosures

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the Voluntary Disclosure provisions of the International Traffic in Arms Regulations (ITAR) by imposing a 60-calendar day deadline after the initial notification to submit a full disclosure, in order to ensure timely submissions; and by clarifying what identifying information should be provided, as well as who should sign the voluntary disclosure in cases of a major violation, a systemic pattern of violations, or in the absence of an effective compliance program, in order to improve the government's ability to assess and respond to the national security and foreign policy consequences of any export violation. These amendments will provide integrity to the voluntary disclosure process, but involve only minor changes to the current voluntary disclosure process.

EFFECTIVE DATE: This rule is effective December 13, 2007.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with an appropriate subject line.
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Compliance, ATTN: Regulatory Change, 12th Floor, SA–1, Washington, DC 20522–0112.
- *Fax:* 202–261–8695.
- *Hand Delivery or Courier (regular work hours only:)* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Compliance, ATTENTION: Regulatory Change, SA–1, 12th Floor, 2401 E Street, NW., Washington, DC 20037.

Persons with access to the Internet may also view this notice by going to the *regulations.gov* Web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Glenn Smith, Office of Defense Trade Controls Compliance, Department of State, 12th Floor, SA–1, Washington DC 20522–0112; Telephone 202–736–9230 or FAX 202–261–8695; *e-mail: DDTCResponseTeam@state.gov.* ATTN: Regulatory Change.

SUPPLEMENTARY INFORMATION: Section 127.12(c)(1)(i) imposes a 60-calendar day deadline after the initial notification to submit a full disclosure. A party may request an extension to the 60-calendar day deadline, and, in certain cases, the Department may require the requester to provide a written certification that the full disclosure in accordance with § 127.12(c)(2) will be submitted within a specified time period. Failure to submit a full disclosure may result in a decision by the Directorate of Defense Trade Controls not to consider the initial notification as a mitigating factor in determining the appropriate disposition of the violation.

Section 127.12(c)(2)(iii) is amended to provide additional details and examples of identifying information to be included in a voluntary disclosure.

Section 127.12(c)(2)(vi) is amended to clarify that corrective actions and compliance initiatives implemented must be directly in response to the violation in the voluntary disclosure, and designed to deter that particular violation from occurring again.

Further, Section 127.12(e) is amended to provide that, in cases of a major violation, a systemic pattern of violations, or the absence of an effective compliance program, DDTC may require that the written certification be signed by a senior officer.

The Directorate of Defense Trade Controls' website at § 127.12(g) is updated.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this rule involves a foreign affairs function of the United States, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This rule will not have an effect on State, local, or tribal governments that would require analysis under the Unfunded Mandates Reform Act.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment 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 substantial direct effects 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.

Executive Orders 12372 and 13132

It is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This 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 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 127 is amended as follows:

PART 127—VIOLATIONS AND PENALTIES

■ 1. The authority citation for part 127 continues to read as follows:

Authority: Secs. 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780.

■ 2. Section 127.12 is amended by revising paragraphs (a), (b)(1), (b)(2), (b)(3) introductory text, (b)(3)(i), (b)(3)(ii), (b)(3)(iv), (b)(3)(v), (b)(4), (c), (d)(1) introductory text, (d)(1)(i), (e), (f), and (g) to read as follows:

§ 127.12 Voluntary disclosures.

(a) *General policy.* The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons (see § 120.14 of this subchapter) that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, order, license, or other authorization issued under the authority of the Arms Export Control Act. The Department may consider a voluntary disclosure as a mitigating factor in determining the administrative penalties, if any, that should be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests, and will be an adverse factor in determining the appropriate disposition of such violations.

(b) *Limitations.* (1) The provisions of this section apply only when information is provided to the Directorate of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this subchapter concerning a violation of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Directorate of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau, or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commences an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order, or other authorization issued under the Arms Export Control Act has been violated.

(3) The violation(s) in question, despite the voluntary nature of the disclosure, may merit penalties, administrative actions, sanctions, or referrals to the Department of Justice to consider criminal prosecution. In the latter case, the Directorate of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure, although the Department of Justice is not required to give that fact any weight. The Directorate of Defense Trade Controls has the sole discretion to consider whether ''voluntary disclosure,'' in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed. Some of the mitigating factors the Directorate of Defense Trade Controls may consider are:

(i) Whether the transaction would have been authorized, and under what conditions, had a proper license request been made;

(ii) Why the violation occurred;

* * * * *

(iv) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violation;

(v) Whether the person making the disclosure did so with the full knowledge and authorization of the person's senior management. (If not, then the Directorate will not deem the disclosure voluntary as covered in this section.)

(4) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person in any civil, criminal, administrative, or other matter.

(c) *Notification.* (1) Any person wanting to disclose information that constitutes a voluntary disclosure should, in the manner outlined below, initially notify the Directorate of Defense Trade Controls immediately after a violation is discovered and then conduct a thorough review of all defense trade transactions where a violation is suspected.

(i) If the notification does not contain all the information required by 127.12(c)(2) of this section, a full disclosure must be submitted within 60 calendar days of the notification, or the Directorate of Defense Trade Controls will not deem the notification to qualify as a voluntary disclosure.

(ii) If the person is unable to provide a full disclosure within the 60 calendar day deadline, an empowered official (see § 120.25 of this subchapter) or a senior officer may request an extension of time in writing. A request for an extension must specify what information required by § 127.12(c)(2) of this section could not be immediately provided and the reasons why.

(iii) Before approving an extension of time to provide the full disclosure, the Directorate of Defense Trade Controls

may require the requester to certify in writing that they will provide the full disclosure within a specific time period.

(iv) Failure to provide a full disclosure within a reasonable time may result in a decision by the Directorate of Defense Trade Controls not to consider the notification as a mitigating factor in determining the appropriate disposition of the violation. In addition, the Directorate of Defense Trade Controls may direct the requester to furnish all relevant information surrounding the violation.

(2) Notification of a violation must be in writing and should include the following information:

(i) A precise description of the nature and extent of the violation (e.g., an unauthorized shipment, doing business with a party denied U.S. export privileges, etc.);

(ii) The exact circumstances surrounding the violation (a thorough explanation of why, when, where, and how the violation occurred);

(iii) The complete identities and addresses of all persons known or suspected to be involved in the activities giving rise to the violation (including mailing, shipping, and e-mail addresses; telephone and fax/facsimile numbers; and any other known identifying information);

(iv) Department of State license numbers, exemption citation, or description of any other authorization, if applicable;

(v) U.S. Munitions List category and subcategory, product description, quantity, and characteristics or technological capability of the hardware, technical data or defense service involved;

(vi) A description of corrective actions already undertaken that clearly identifies the new compliance initiatives implemented to address the causes of the violations set forth in the voluntary disclosure and any internal disciplinary action taken; and how these corrective actions are designed to deter those particular violations from occurring again;

(vii) The name and address of the person making the disclosure and a point of contact, if different, should further information be needed.

(3) Factors to be addressed in the voluntary disclosure include, for example, whether the violation was intentional or inadvertent; the degree to which the person responsible for the violation was familiar with the laws and regulations, and whether the person was the subject of prior administrative or criminal action under the AECA; whether the violations are systemic; and the details of compliance measures, processes and programs, including training, that were in place to prevent such violations, if any. In addition to immediately providing written notification, persons are strongly urged to conduct a thorough review of all export-related transactions where a possible violation is suspected.

(d) *Documentation.* (1) The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to:

(i) Licensing documents (e.g., license applications, export licenses and end-user statements), exemption citation, or other authorization description, if any;

* * * * *

(e) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary disclosure are true and correct to the best of that person's knowledge and belief. Certifications should be executed by an empowered official (See § 120.25 of this subchapter), or by a senior officer (e.g. chief executive officer, president, vice-president, comptroller, treasurer, general counsel, or member of the board of directors). If the violation is a major violation, reveals a systemic pattern of violations, or reflects the absence of an effective compliance program, the Directorate of Defense Trade Controls may require that such certification be made by a senior officer of the company.

(f) *Oral presentations.* Oral presentation is generally not necessary to augment the written presentation. However, if the person making the disclosure believes a meeting is desirable, a request should be included with the written presentation.

(g) Send voluntary disclosures to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls. Consult the Directorate of Defense Trade Controls Web site at *http://www.pmddtc.state.gov* for the appropriate street address.

Dated: November 30, 2007.

John C. Rood,

Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. E7–24069 Filed 12–12–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9363]

RIN 1545–BD65

Returns Required on Magnetic Media; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9363) that were published in the **Federal Register** on Tuesday, November 13, 2007 (72 FR 63807) relating to the requirements for filing corporate income tax returns and returns of organizations required to file returns under section 6033 on magnetic media pursuant to section 6011(e) of the Internal Revenue Code.

DATES: The correction is effective December 13, 2007.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9363) that are the subject of this correction are under sections 6011, 6033 and 6037 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9363) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9363), which was the subject of FR Doc. E7–22147, is corrected as follows:

1. On page 63808, column 2, in the preamble, under the paragraph heading ''*1. Returns Covered*'', line 11 from the bottom of the column, the language ''990 series that are required to be filled'' is corrected to read ''990 series that are required to be filed''.

2. On page 63809, column 2, in the preamble, under the paragraph heading *''4. Hardship Waiver''*, lines 6 through 10 of the third paragraph of the column, the language ''Providers for Form 1120/1120S; IRS Publication 4206, Modernized e-file information for Authorized e-file Providers of Exempt Organization Filings; and on the *IRS.gov* Internet site.'' is corrected to read

''Providers for Form 1120/1120S; and on the *IRS.gov* Internet site.''

LaNita Van Dyke,

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

[FR Doc. E7–24117 Filed 12–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 161 and 165

[CGD01–04–133]

RIN 1625–AB17

Regulated Navigation Area; Buzzards Bay, Massachusetts; Navigable Waterways Within the First Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is making two technical corrections to a Final Rule published in the **Federal Register** on August 30, 2007. The Final Rule titled ''Regulated Navigation Area; Buzzards Bay, Massachusetts; Navigable Waterways within the First Coast Guard District'' contained imprecise and potentially confusing cross references regarding the applicability of certain regulations implemented by the rule. The revised wording provided in this correction is intended to clarify the intent of the final rule and eliminate any possible confusion.

DATES: This correction is effective as of December 13, 2007.

ADDRESSES: Comments and material received from the public concerning this correction will be made part of the docket for the underlying rule and will be available for inspection and copying at the offices of Commander, Coast Guard Sector Southeastern New England, East Providence Office, 20 Risho Avenue, East Providence, RI 02914, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, East Providence, RI, 401–435–2351.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2007, the Coast Guard published a Final Rule titled ''Regulated Navigation Area; Buzzards Bay, Massachusetts; Navigable Waterways within the First Coast Guard District'' to amend an existing Regulated Navigation Area (RNA) within the waters of the First Coast Guard District. (72 FR 50052). Specifically, the Final Rule required that certain tank vessels and tug/barge combinations transiting Buzzards Bay, Massachusetts, be accompanied by escort tugs and pilots operating under a properly endorsed Federal pilot's license. To further this objective, the Coast Guard also established a Vessel Movement Reporting System (VMRS) for Buzzards Bay, and requires that vessels subject to the Vessel Bridge-to-Bridge VHF Radiotelephone regulations participate in the VMRS. This correction alters two potentially confusing cross-references to regulations mentioned in the final rule. The substantive requirements of the rule are not altered by this technical correction.

Need for Correction

The Final Rule amended parts 161 and 165 of Title 33 of the Code of Regulations. As explained in the preamble to the Final Rule, the inserted language was intended to make the general VMRS operating requirements, set forth in subpart B of part 161, applicable to all vessels transiting Buzzard's Bay that are subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations, set forth in 33 CFR part 26. The Final Rule, as published, however, erroneously referred to ''Subpart B of this chapter'' and ''Subpart B of this part'' in part 161 and part 165, respectively, instead of referring to ''Subpart B of part 161'' in the revisions of both part 161 and part 165. The language substituted by this correction is intended to eliminate any potential confusion regarding what vessels are required to participate in the Buzzard's Bay VMRS, and what is required of those vessels.

List of Subjects

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

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 parts 161 and 165 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

■ 1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70117; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 161.12, revise footnote 5 of table 161.12(c) to read as follows:

§ 161.12 Vessel operating requirements.

* * * * *

(c) * * *

[5] In addition to the vessels denoted in Section 161.16 of this chapter, requirements set forth in subpart B of 33 CFR part 161 also apply to any vessel transiting VMRS Buzzards Bay required to carry a bridge-to-bridge radiotelephone by part 26 of this chapter.

* * * * *

PART 165—WATERWAYS SAFETY; REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. In § 165.100, revise(d)(5)(iv) to read as follows:

§ 165.100 Regulated Navigation Area: Navigable waters within the First Coast Guard District.

* * * * *

(d) * * *

(5) * * *

(iv) In addition to the vessels denoted in § 161.16 of this chapter, requirements set forth in subpart B of 33 CFR part 161 also apply to any vessel transiting VMRS Buzzards Bay required to carry a bridge-to-bridge radiotelephone by Part 26 of this chapter.

* * * * *

Dated: November 29, 2007.

T.V. Skuby,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. E7–24128 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD55

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule governs winter visitation and certain recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway. This final rule is issued to implement the Record of Decision (ROD) for the Winter Use Plans Final Environmental Impact Statement (FEIS) approved November 20, 2007, and will ensure that visitors have an appropriate range of winter recreation opportunities that are appropriate to the national park setting, and that these activities do not impair park resources and values. The rule requires that most recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound emissions requirements, that snowmobilers and snowcoach riders in Yellowstone be accompanied by a commercial guide, and sets daily entry limits on the numbers of snowmobiles and snowcoaches that may enter the parks. Traveling off designated oversnow routes will remain prohibited. The FEIS, ROD, and other documents pertaining to winter use management in the parks can be found at *http://www.nps.gov/yell/planyourvisit/winteruse.htm*.

DATES: This regulation is effective on December 19, 2007.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Management Assistant's Office, Yellowstone National Park, 307–344–2019.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr. Memorial Parkway (the Parks) for several decades. In 1997, the Fund for Animals and others filed suit, alleging non-compliance with the National Environmental Policy Act (NEPA), among other laws. The suit resulted in a settlement agreement in October 1997 which, among other things, required the NPS to prepare a new winter use plan for the Parks. On October 10, 2000, a Winter Use Plans Final Environmental Impact Statement (2000 FEIS) was published. A Record of Decision (2000 ROD) was signed on November 22, 2000, and subsequently distributed to interested and affected parties. The 2000 ROD was to eliminate both snowmobile and snowplane use from the Parks by the winter of 2003–2004 and provide access via an NPS-managed, mass-transit snowcoach system. This decision was based on a finding that the snowmobile and snowplane use existing at that time—and the snowmobile use analyzed in the 2000 FEIS alternatives—impaired park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision required a special regulation for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001 (66 FR 7260). That rule became effective on April 22, 2001.

On December 6, 2000, the Secretary of the Interior, the Director of the National Park Service and others were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers' Association (ISMA) and others. The States of Wyoming and Montana subsequently intervened on behalf of the plaintiffs. The lawsuit asked for the decision, as reflected in the 2000 ROD, to be set aside. The lawsuit alleged, among other things, a violation of NEPA. A settlement was reached on June 29, 2001, under which NPS agreed to prepare a Supplemental Environmental Impact Statement (SEIS) incorporating ''any significant new or additional information or data submitted with respect to a winter use plan.'' Additionally, the NPS provided the opportunity for additional public participation in furtherance of the purposes of NEPA. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

A draft SEIS was published on March 29, 2002, and distributed to interested and affected parties. NPS accepted public comments on the draft for 60 days, and 357,405 pieces of correspondence were received. The SEIS focused its analysis only on the issues relevant to allowing recreational snowmobile and snowcoach use in the parks. These impact topics included air quality and air quality-related values, public and employee health and safety, natural soundscapes, socioeconomics, wildlife (bison and elk), and visitor experience. The SEIS did not re-evaluate the decision to ban snowplane use on Jackson Lake because this was not at issue in the lawsuit or the resulting settlement and because the NPS had no reason to doubt the validity of its finding that snowplane use impaired park resources.

On November 18, 2002, the NPS published a final rule (67 FR 69473) (''delay rule'') based on the 2000 FEIS, which generally postponed implementation of the phase-out of snowmobiles in the Parks for one year. This rule allowed for additional time to plan and implement the NPS-managed mass-transit, snowcoach-only system outlined in the 2000 FEIS as well as time for completion of the SEIS. The rule delayed the implementation of the daily entry limits on snowmobiles until the winter of 2003–2004 and the complete prohibition on snowmobiles until 2004–2005. The 2001 regulation's transitional requirement that snowmobile parties use an NPS-permitted guide was also delayed until the 2003–2004 winter use season.

Other provisions under the January 2001 regulation concerning licensing requirements, limits on hours of operation, Yellowstone side road use, and the ban on snowplane use remained effective for the winter use season of 2002–2003.

The Notice of Availability for the final SEIS was published on February 24, 2003 (68 FR 8618). The final SEIS included a new alternative, alternative 4, which called for 950 snowmobiles in Yellowstone and 190 in Grand Teton. Most would be subject to air and sound emission requirements, and 80% of the Yellowstone snowmobiles would be commercially guided and 20% would be non-commercially guided. In addition, the final SEIS included changes to the alternatives, changes in modeling assumptions and analysis, and incorporated additional new information. Effective on March 25, 2003, NPS signed a ROD for the SEIS, which selected final SEIS alternative 4 for implementation and enumerated additional modifications to that alternative. The final SEIS and ROD found that implementation of final SEIS alternatives 1a, 1b, 3, or 4 would not be likely to impair park resources or values due to motorized oversnow recreation. On December 11, 2003, the new regulation governing winter use in the parks was published.

On December 16, 2003, the U.S. District Court for the District of Columbia, ruling in *Fund for Animals* v. *Norton*, vacated and remanded the December 11, 2003, regulation and SEIS. The court effectively reinstated the January 22, 2001, regulation phasing out recreational snowmobiling subject to the delay rule. Specifically, up to 493 snowmobiles a day were to be allowed into Yellowstone for the 2003–2004

season, and another 50 in Grand Teton and the Parkway combined. All snowmobiles in Yellowstone were required to be led by a commercial guide. Snowmobiles were to be phased out entirely from the parks in the 2004–2005 season.

ISMA and the State of Wyoming reopened their December 2000 lawsuit against the Department of the Interior and the NPS. On February 10, 2004, the U.S. District Court for the District of Wyoming issued a preliminary injunction in *ISMA* v. *Norton* preventing the NPS from continuing to implement the snowmobile phase-out. The court also directed the superintendents of Yellowstone and Grand Teton to issue emergency orders that were ''fair and equitable'' to all parties to allow visitation to continue for the remainder of the winter season. Based on that injunction and using the authority of 36 CFR 1.5, the superintendents authorized up to 780 snowmobiles a day into Yellowstone and up to 140 into Grand Teton and the Parkway combined. In Yellowstone, the requirement that all snowmobilers travel with a commercial guide remained in effect.

On June 30, 2004, the DC court ordered that NPS promulgate a new rule governing the 2004–05 winter use season at least 30 days prior to the start of the season, and that the new rule be consistent with the DC court's 2003 ruling. On October 14, 2004, the Wyoming court vacated and remanded the 2000 FEIS, 2000 ROD, and the 2001 implementing rule, based on violations of NEPA and the Administrative Procedure Act.

Because of the DC court's order, and because there were no clear rules under which to manage the Parks for the winter season of 2004–2005, the NPS prepared a Temporary Winter Use Plans Environmental Assessment in 2004. The temporary plan was intended to provide a framework for managing winter use in the Parks for a period of 3 years and was approved in November 2004 with a ''Finding of No Significant Impact'' (FONSI). An interim rule was published in the **Federal Register** implementing the temporary plan. Its provisions included a limit of 720 snowmobiles per day for Yellowstone and 140 snowmobiles for Grand Teton and the Parkway, a requirement that all recreational snowmobiles in Yellowstone must be accompanied by a commercial guide, and a requirement that all recreational snowmobiles operating in the Parks must meet NPS air and sound emissions requirements for reducing noise and air pollution (with limited exceptions at Grand Teton and the Parkway). The interim rule was effective through the winter season of 2006–2007 while the NPS was to prepare a long-term winter use plan and EIS for the Parks.

Several entities then filed separate lawsuits challenging the temporary plan in the District Court in Wyoming and the District Court in the District of Columbia, respectively. On three separate occasions, Congress subsequently included language in appropriations legislation for the Department of the Interior requiring that the temporary winter use rules remain in effect for the winter seasons of 2004–2005, 2005–2006, and 2006–2007. In October 2005, the Wyoming District Court upheld the validity of the 2004 temporary winter use rule in *Wyoming Lodging and Restaurant Association* v. *U.S. Department of the Interior*. As a result of these legislative actions, on September 24, 2007, the DC District Court dismissed as moot the pending claims against the temporary plan. Additionally, in June 2007 the Wyoming District Court, in a separate lawsuit filed by Save Our Snowplanes, upheld the prohibition on the use of snowplanes on Jackson Lake. An appeal of that decision by the plaintiffs is currently pending before the United States Court of Appeals for the 10th Circuit.

A proposed rule was published in the **Federal Register** on May 16, 2007 (72 FR 27499). This Final Rule is issued in conjunction with the FEIS and the ROD. Absent this rulemaking, the authority to operate snowmobiles and snowcoaches in the Parks would have expired after the 2006–2007 winter season.

Rationale for the Final Rule

This rule strikes a balance between the use of snowmobiles and snowcoaches in the Parks and is designed to protect against the adverse impacts that occurred from the historical types and numbers of snowmobiles used. Experience over the past several winters, during which a temporary plan has guided winter use management of the Parks, has shown that the combination of strict limits on the numbers of snowmobiles allowed to enter the Parks, the use of snowmobiles that meet NPS requirements for air and sound emissions (generally referred to in the FEIS as Best Available Technology or BAT, but here referred to simply as NPS requirements, to avoid confusion with use of the term best available technology under other environmental laws), the requirement that visitors touring Yellowstone on snowmobiles be accompanied by a commercial guide, and the availability of snowcoaches, allows for an appropriate range of visitor experiences while ensuring that the integrity of park resources and values is not harmed. The NPS found that the interim regulations that were in effect over the past three winter seasons resulted in quieter conditions, cleaner air, fewer wildlife impacts, and much improved visitor and employee safety and experiences. This rule reduces the daily number of snowmobiles allowed to enter the Parks in order to better protect park soundscapes and other resources, includes new requirements for snowcoach air and sound emissions, and eliminates certain oversnow vehicle routes. In addition to the actual experiences of the last several winters, the decisions underlying the Record of Decision and this rule have also been informed by new analysis and information presented in the FEIS.

This rule is consistent with the 2006 NPS Management Policies. In managing units of the National Park System, the NPS may undertake actions that have both beneficial and adverse impacts on park resources and values. However, the NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources and values. Impairment is defined in the 2006 NPS Management Policies in section 1.4.5 as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources and values.

Since the impact threshold at which impairment occurs is not always readily apparent, the NPS applies a standard that offers greater assurances that impairment will not occur. The NPS does this by avoiding impacts that it determines to be unacceptable. These are impacts that fall short of impairment but are still not acceptable within a particular park's environment. Unacceptable impacts are defined in the 2006 NPS Management Policies in section 1.4.7.1., available online at *http://www.nps.gov/policy/MP2006.pdf*.

The NPS received over 122,000 comments on the DEIS and about 1,500 comments on the proposed rule. In many cases the comments received on the proposed rule were very similar in content to those received on the DEIS. Numerous commentors expressed concerns that the preferred alternative in the DEIS, and its implementation through rulemaking, would violate the NPS Organic Act, would be inconsistent with the 2006 NPS Management Policies, and in some cases explicitly referenced the concept of unacceptable

impacts. The NPS addressed these concerns in a number of ways, including new modeling and analysis to more clearly show the environmental impacts of winter use, a revision of the preferred alternative from the DEIS to that in the Final EIS which reduced the number of snowmobiles allowed in Yellowstone from 720 per day to 540 per day, which is reflected in the ROD and Final Rule, and affirmance in both the ROD and this rule that implementation of the preferred alternative will not result in impairment of park resources and values, nor will it result in unacceptable impacts on the Parks. This rule implements that decision.

This rule includes strict limits on the number of snowmobiles allowed to enter the Parks each day. Prior to the implementation of a managed winter use program with the winter of 2003–2004, an average of 795 snowmobiles entered Yellowstone each day, with peak days averaging approximately 1,400. This rule allows for 540 snowmobiles per day in Yellowstone, a reduction from the 720 snowmobiles authorized over the previous 3 winters, and which would have been allowed under the proposed rule. In response to public comment and the analysis presented in the FEIS, which included the results of both modeling and monitoring over the past several winters, the NPS determined that a limit of 540 snowmobiles per day, along with the availability of snowcoaches, will best protect the integrity of park resources and values while providing an appropriate range of visitor experiences. In particular, the lower number of snowmobiles will reduce the impacts on the natural soundscapes of the park, which the NPS found to be somewhat greater than expected even with the reduced number of snowmobiles that used the park over the last several winters. Similarly, the number of snowmobiles authorized in Grand Teton and the Parkway is limited under this rule to 65 per day, allowing access to ice fishing opportunities on Jackson Lake and to the recreational opportunities on the adjacent Targhee National Forest. The rule also allows for up to 50 snowmobiles to enter Yellowstone on the Cave Falls Road, an approximately one-mile segment extending into the southwest corner of the park from the Targhee National Forest. Use of this route is incidental to recreational use of the national forest lands, is far removed from the recreational snowmobiling and the resulting impacts that occur within the interior of Yellowstone, and is therefore considered separately from the 540 snowmobile limit.

Adjustments to the daily entry limits for snowmobiles and snowcoaches through an adaptive management program is one of several tools available to park managers to ensure that the goals and objectives of the winter use plans are maintained. Through adaptive management, if monitoring of use levels of snowmobiles and snowcoaches allowed under the Record of Decision indicates acceptable conditions, the NPS will increase use levels to the extent acceptable conditions can be maintained. Conversely, if monitoring of use levels of snowmobiles and snowcoaches allowed under the Record of Decision indicates unacceptable conditions, the NPS will reduce use levels to an extent that acceptable conditions can be maintained. In some cases, additional rulemaking would be required in order to adjust numbers.

To mitigate impacts to air quality and the natural soundscape, the NPS is continuing the requirement that all recreational snowmobiles meet strict air and sound emissions requirements to operate in the parks, with limited exceptions. For air emissions, all snowmobiles must achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide, relative to EPA's baseline emissions assumptions for conventional two-stroke snowmobiles. For sound restrictions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers (SAE) J192 test procedures (revised 1985). The Superintendent will maintain a list of approved snowmobile makes, models, and years of manufacture that meet NPS requirements. For the winter of 2006–2007, the NPS certified 35 different snowmobile models (from various manufacturers; model years 2002–2007) as meeting the NPS requirements. With one exception described later in this section, the certification is good for 6 years from the date on which a model is certified as meeting the requirements.

The NPS is continuing the requirement that began with the 2005 model year that all snowmobiles must be certified under 40 CFR 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons (HC) and 120 g/kW-hr for carbon monoxide (CO). Snowmobiles must be tested on a five-mode engine dynamometer consistent with the test procedures specified by the EPA (40 CFR 1051 and 1065). Other test methods could be approved by the NPS.

The NPS is retaining the use of the FEL method for demonstrating compliance with its emissions requirements because it has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve the NPS's emissions requirements, unless modified or damaged (under this regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with NPS requirements and therefore not permitted to enter the parks). Use of FEL will also minimize any administrative burden on snowmobile manufacturers to demonstrate compliance with NPS requirements, because they already provide FEL data to the EPA. Further, the EPA has the authority to ensure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, the NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that NPS emissions requirements are consistent with these labels. The use of FEL will avoid potential confusion for consumers.

The air emissions requirements for snowmobiles allowed to operate in the Parks should not be confused with standards adopted by the EPA in a final rule published in the **Federal Register** on November 8, 2002 (67 FR 68242). The EPA regulations require manufacturers to meet certain fleet averages for HC and CO emissions. For example, the Phase 1 standards required all snowmobile manufacturers to meet a fleet-wide average in 2007 of 275 g/kW-hr for CO and 100 g/kW-hr for HC, which represents a 30-percent reduction from the baseline emission rates for uncontrolled snowmobiles. Any particular make/model may emit more or less than the standard as long as the fleet average does not exceed the standard. Phase 2 and Phase 3 standards will be implemented in 2010 and 2012,

respectively, effectively requiring the equivalent of a 50% reduction in both HC and CO as compared to average baseline levels. By comparison, NPS requires that all snowmobiles operating in the Parks meet a FEL of 120 g/kW-hr for CO and 15 g/kW-hr for HC. This means that snowmobiles operating in the Parks represent the cleanest that are commercially available.

To determine compliance with the sound emissions requirements, snowmobiles must be tested using SAE J192 test procedures (revised 1985; or potentially as further revised and adapted for use by NPS). The NPS recognizes that the SAE updated these test procedures in 2003; however, the changes between the 2003 and 1985 test procedures could yield different measurement results. The sound emissions requirement was initially established using 1985 test procedures (in addition to information provided by industry and modeling). To ensure consistency in the test results, the NPS will at this time continue to use the 1985 test. The SAE J192 (revised 1985) test also allows for a tolerance of 2 dBA over the sound limit to account for variations in weather, snow conditions, and other factors. The NPS understands that an update to the 2003 J192 procedures may be underway, and the NPS will continue to evaluate these test procedures and possibly adopt them after these regulations are implemented. Other test methods could be approved by NPS on a case-by-case basis.

Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This exception to the SAE J192 test procedures maintains consistency with the testing conditions used to determine the sound requirement. This allowance for reduced barometric pressure is necessary since snowmobiles were tested at the elevation of Yellowstone National Park, where atmospheric pressure is lower than that under the SAE J192's requirements. Testing data indicate that snowmobiles test quieter at high elevation, and therefore some snowmobiles may comply with the NPS's sound emissions requirements at higher elevations even though they do not when tests are conducted near sea level.

The NPS will annually publish a list of snowmobile makes, models, and years of manufacture that meet its emissions and sound requirements. Snowmobile manufacturers may demonstrate that snowmobiles are compliant with the air emissions requirements by submitting to the NPS a copy of their applications used to demonstrate compliance with EPA's general snowmobile regulation (indicating FEL). The NPS will accept this application information from manufacturers in support of conditionally certifying a snowmobile as meeting its air emissions requirements, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify a snowmobile at an emission level that would no longer meet the NPS's requirements, this snowmobile would no longer be considered by NPS to be compliant with its requirements and would be phased-out according to a schedule that will be determined by the NPS to be appropriate. For sound emissions, snowmobile manufacturers may submit their existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards. This regulation does not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation. The NPS intends to continue to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program. When the NPS certifies snowmobiles as meeting its requirements, it will announce how long that certification applies. Generally, each snowmobile model will be approved for entry into the parks for 6 winter seasons after it is first listed. Based on NPS experience, 6 years represents the typical useful life of a snowmobile, and thus 6 years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant. It is also based on EPA snowmobile emission regulations and the deterioration factors that are part of those regulations (EPA requires that if a manufacturer certifies its snowmobile will comply with EPA's emission regulations, the snowmobile will meet those regulations for a period of 5 years or 5,000 miles). The NPS recognizes that some privately owned snowmobiles used predominantly for ice fishing on Jackson Lake may have relatively low mileages even after 6 years of use, and therefore may not have experienced the type of deterioration that would cause them to fail NPS air and sound emissions requirements. The certification period for snowmobiles being operated on Jackson Lake will still be considered to be 6 years, but it may be extended up to a total of 10 years as long as the snowmobile's mileage does not exceed 6,000 miles.

Individual snowmobiles modified in such a way as to increase sound and air emissions of hydrocarbons (HC) and carbon monoxide (CO) beyond the proposed emission restrictions will be denied entry to the parks. It is the responsibility of end users and guides and outfitters to ensure that their oversnow vehicles, whether snowmobiles or snowcoaches, comply with all applicable restrictions. Air and sound emission requirements for snowcoaches are described below. The requirement in Yellowstone that all snowmobilers travel with commercial guides will assist NPS in enforcing these requirements, since businesses providing commercial guiding services in the parks are responsible under their contracts with the park to ensure that their clients use only snowmobiles that meet the NPS's requirements. In addition, these businesses are required to ensure that snowmobiles used in the park are not modified in such a way as to increase sound or air emissions, and that snowmobiles are properly maintained.

Snowmobiles being operated on the Cave Falls Road, which extends approximately one mile into the Yellowstone from the adjacent national forest, will be exempt from air and sound emissions requirements. Since use of the Cave Falls Road is relatively light and incidental to recreational use of the surrounding national forest, it is not necessary to require these users to comply with requirements that address issues associated with use of the interior portions of the park.

In Grand Teton, all recreational snowmobiles operating on Jackson Lake will be required to meet NPS air and sound emissions requirements.

During the winter season of 2007–2008, snowmobiles being operated on the portion of the Continental Divide Snowmobile Trail (CDST) between Moran Junction and Flagg Ranch, within both Grand Teton and the Parkway, must also meet NPS air and sound emissions requirements. Beginning with the winter season of 2008–2009, that portion of the CDST will no longer be maintained or designated for oversnow vehicle use. The segment of the CDST between the east boundary of Grand Teton and Moran is exempt from NPS air and sound emissions requirements. Because this portion of the CDST passes in and out of the park boundary and is generally adjacent to other public and

private lands where snowmobile use is permitted, this section is being managed similarly to other routes where the use of snowmobiles not meeting air and sound emissions requirements is allowed in order to provide access to adjacent public and private lands. In light of the small amount of such use that typically occurs along this segment, as well as the context in which that use occurs (i.e., immediately alongside a heavily used highway), the NPS has determined that the impacts of this use of snowmobiles that do not meet NPS air and sound emissions requirements are acceptable.

For the winter of 2007–2008, snowmobiles being operated on the Grassy Lake Road within the Parkway are required to meet NPS air and sound emissions requirements, except that snowmobiles originating in the Targhee National Forest will be allowed to travel eastbound to Flagg Ranch and return westbound without meeting the NPS requirements; however, these snowmobiles may not travel further into the Parkway than Flagg Ranch. The NPS is allowing this exception in order to ensure that visitors to the remote Grassy Lake area of the Targhee National Forest are able to access food, fuel, emergency services, and other amenities available at Flagg Ranch. Beginning with the 2008–2009 winter season, snowmobiles being operated on the Grassy Lake Road will not be required to meet air and sound emissions requirements regardless of whether they originate travel at Flagg Ranch or in the national forest. In light of the relatively short length of this segment and the very limited amount of snowmobile use, the NPS has determined that the impacts of this use of snowmobiles that does not meet NPS air and sound emissions requirements are acceptable.

Under concession contracts issued in 2003, 78 snowcoaches are currently authorized to operate in Yellowstone (and in the parkway between Flagg Ranch and Yellowstone's South Entrance). Approximately 29 of these snowcoaches were manufactured by Bombardier and were designed specifically for oversnow travel. Those 29 snowcoaches were manufactured before 1983 and are referred to as ''historic snowcoaches'' for the purpose of this rulemaking. All other snowcoaches are passenger vans or light buses that have been converted for oversnow travel using tracks and/or skis. During the winter of 2005–2006, an average of 29 snowcoaches entered Yellowstone each day.

As of the winter of 2008–2009, all snowcoaches must be commercially guided. These trained, knowledgeable operators help ensure that air and sound emission requirements are met, wildlife impacts are minimized, and visitor and employee safety is assured.

In comparison with four-stroke snowmobiles, snowcoaches operating within EPA's Tier I standards can be substantially cleaner, especially given that snowcoaches currently carry an average of 7 times more passengers than snowmobiles. In 2004, EPA began phasing in Tier II emissions standards for multi-passenger vans which will be fully phased in by 2009. Tier II standards will require that vehicles be even cleaner than under Tier I. Tier II standards would also significantly reduce the open loop mode of operation, which is the most polluting mode of engine operation.

Beginning in the 2011–2012 season, all snowcoaches in the Parks must meet air emission requirements, which will be the functional equivalent of having EPA Tier I emissions control equipment incorporated into the engine and drive train for the vehicle's class (size and weight) as a wheeled vehicle. The NPS will encourage, through contract and permit, that snowcoaches have EPA Tier II emissions control equipment for the vehicle class. In addition, all critical emission and sound-related exhaust components that were originally installed by the manufacturer must be in place and functioning properly. Such components may only be replaced with original equipment manufacturer (OEM) components where possible. If OEM parts are not available, aftermarket parts may be used if they do not worsen emission and sound characteristics from OEM levels. In general, catalysts that have exceeded their typical useful life as stated by the manufacturer must be replaced unless the operator can demonstrate the catalyst is functioning properly.

Beginning in the 2011–2012 season, snowcoaches must meet a sound emissions requirement of no greater than 73 dBA; test procedures will be determined by the NPS.

The restrictions on air and sound emissions proposed in this rule are not a restriction on what manufacturers may produce but an end-use restriction on which commercially produced snowmobiles and snowcoaches may be used in the parks. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to ''promote and regulate'' the use of national parks ''by such means and measures as conform to the fundamental purpose of said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Further, the Secretary is expressly authorized by 16 U.S.C. 3 to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *'' This exercise of the NPS Organic Act authority is not an effort by NPS to regulate manufacturers and is consistent with Section 310 of the Clean Air Act.

Since 2001, the Parks have been converting their own administrative fleet of snowmobiles to four-stroke machines. These machines have proven successful in fulfilling most of the Service's administrative needs throughout the Parks. However, the NPS recognizes that some administrative applications, such as off-trail boundary patrols in deep powder, towing heavy equipment or disabled sleds, search and rescue, or law enforcement uses may require additional power beyond that supplied by currently available snowmobiles that meet the NPS's air and sound emissions requirements. In such limited cases, the NPS will sometimes need to use snowmobiles that do not meet the requirements this rule imposes upon recreational snowmobiles (which do not have these special needs because they travel only upon groomed roads).

In order to mitigate impacts to natural soundscapes and wildlife, and for visitor and employee safety, all recreational snowmobiles operated in Yellowstone must be accompanied by a commercial guide, except for those being operated on the one-mile segment of the Cave Falls Road that extends into the park from the adjacent national forest. This guiding requirement will reduce conflicts with wildlife along roadways because guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercially guided parties also tend to be larger in size, which reduces the overall number of encounters with wildlife and reduces the amount of time that oversnow vehicles are audible. Commercial guides are educated in safety, knowledgeable about park rules, and are required to exercise reasonable control over their clientele, which has reduced unsafe and illegal snowmobile use. Commercial guides with contractual obligations to the NPS also allow for more effective enforcement of park rules by the NPS. These guides receive rigorous multi-day training and perform guiding duties as employees of a business. They also are experts at interpreting the resources of the parks to their clients. Commercial guides are

employed by local businesses; those jobs are not performed by NPS employees.

Commercial guides use a ''follow-the-leader'' approach, stopping often to talk with the group. They lead snowmobiles single-file through the park, using hand signals to pass information down the line from one snowmobile to the next, a system which has proven to be effective. Signals are used to warn group members about wildlife and other road hazards, indicate turns, and when to turn on or off the snowmobile. Further, all commercial guides are trained in basic first aid and CPR. In addition to first aid kits, they often carry satellite or cellular telephones, radios, and other equipment for emergency use. Guides are thus well-equipped to ensure that park regulations are enforced and to provide a safer overall experience for visitors.

Since the winter of 2003–2004, all snowmobilers in Yellowstone have been led by commercial guides, resulting in significant positive effects on visitor health and safety. Guides have been proven to be very effective at enforcing proper touring behavior, such as adherence to speed limits, staying on the groomed road surfaces, and other snowmobiling behaviors that are appropriate to safely and responsibly visiting the park. Since implementation of the guiding program there have been pronounced reductions in the number of law enforcement incidents and accidents associated with the use of snowmobiles, even when accounting for the reduced number of snowmobilers relative to historic use levels. The use of guides is also beneficial to wildlife, since guides are trained to respond appropriately when encountering wildlife.

No more than eleven snowmobiles will be permitted in a group, including that of the guide. Except in emergency situations, guided parties must travel together and remain within a maximum distance of one-third mile of the first snowmobile in the group. These size and distance limits will ensure that guided parties do not become separated, will allow for sufficient and safe spacing between individual snowmobiles within the guided party, allow the guide(s) to maintain control over the group and minimize the impacts on wildlife and natural soundscapes. NPS thus expects that the continuation of the guiding requirement will help ensure compliance with park regulations and protect park resources.

Scientific studies and monitoring of winter visitor use and park resources (including air quality, natural soundscapes, wildlife, employee health and safety, water quality, and visitor experience) will continue. As part of its adaptive management of winter use activities, NPS will close selected areas of the Parks to visitor use, including sections of roads, if these studies indicate that human presence or activities have a substantial adverse effect on wildlife or other park resources that cannot otherwise be mitigated. A one-year notice will ordinarily be provided before any such closure is implemented unless immediate closure is deemed necessary to avoid impairment of park resources. Most non-emergency changes in park management implemented under the adaptive management framework will be implemented only after at least one or 2 years of monitoring, followed by a 6-to 12-month implementation period. The Superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

The adaptive management program described in the ROD provides park managers with a wide variety of tools to ensure that the goals and objectives of the winter use plans are being achieved. Some of the techniques available include adjustments in snowmobile or snowcoach use levels (up or down), adjustments in air and sound emissions requirements, visitor and guide education, timing of entries, and group sizes. Also, the future improvements in snowcoach air and sound emissions will assist park managers in meeting goals and objectives. Through adaptive management, if monitoring of use levels of snowmobiles and snowcoaches allowed under the Record of Decision indicates acceptable conditions, the NPS will increase use levels to an extent acceptable conditions can be maintained. Conversely, if monitoring of use levels of snowmobiles and snowcoaches allowed under the Record of Decision indicates unacceptable conditions, the NPS will reduce use levels to an extent acceptable conditions can be maintained. In some cases, additional rulemaking would be required in order to implement certain changes.

The NPS is implementing a multi-year research proposal intended to specifically address the question of whether grooming of the Madison to Norris road segment in Yellowstone has led to alterations of bison movements and distribution. The question was identified in a report by Dr. Cormack Gates et al., entitled ''The Ecology of Bison Movements and Distribution in and Beyond Yellowstone National Park'' (2005). The research program will involve a linked series of experiments that will enable researchers to gain insight into how road grooming and other factors currently affect bison travel. Initially, the research program will include the analysis of existing data on GPS-collared bison, the tracking of additional GPS-collared bison, and the deployment of cameras along travel routes to gain information on the relationship between road grooming and bison travel, without necessitating the closure of the Gibbon Canyon road segment to public oversnow vehicle travel. During the 5 year period, other roads or routes may be investigated to help understand the relationship between snow depth, grooming, and bison movement. For example, the Firehole Canyon Drive may be closed to oversnow travel and the Grand Loop Road gated in that area to allow snowmobile and snowcoach travel, but not bison movement on the main road. Bison would then be forced to travel cross country or along the ungroomed Firehole Canyon Road. Similarly, the Madison to Norris Road may be fenced or gated in the vicinity of the new bridge over the Gibbon River to restrict bison movement on the Madison to Norris Road and force bison to travel cross country. Thus bison movement and snow depth and roads may be tested without closing a main road. However, following the 5 years of data gathering and analysis, the NPS, in consultation with the researchers, will consider closing the main Madison to Norris route to observe bison response. That decision will rely on the results of the data gathering and analysis and whether such a closure would be likely to yield informative data or conclusions. If implemented, such a closure would likely last several seasons.

Snowmobiles and snowcoaches will continue to be restricted to designated routes, which are a subset of the same roads that are traveled by motor vehicles during the remainder of the year, or in the case of Jackson Lake, by motorboats during the summer. In Yellowstone, in addition to most of the Grand Loop Road, certain side roads will be open for snowmobile use after noon, based on the successful experience of the NPS with temporal zoning on Firehole Canyon Drive. Virginia Cascades will be accessible only via ski and snowshoe.

This rule addresses Sylvan Pass in Yellowstone. For the winter season of 2007–2008 the pass will be managed continuing the combined program outlined in the 2004 Temporary Plan. After the winter of 2007–2008, in order to maximize risk reduction, the pass would be open and managed using full avalanche forecasting (as defined in the Sylvan Pass Operational Risk

Management Assessment and may be viewed at: *http://www.nps.gov/yell/parkmgmt/winterusetechnicaldocuments.htm).* When full forecasting indicates the pass is safe, the pass would be open to oversnow travel (both motorized and non-motorized access).

The National Park Service will, in good faith, work cooperatively with the State of Wyoming, Park County, Wyoming and the town of Cody to determine how to provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass in the winter use seasons beyond 2007–2008.

The National Park Service will meet with representatives of the State of Wyoming, Park County, Wyoming and the town of Cody to further explore reasonable avalanche and access mitigation safety measures and costs. In order to provide adequate time to implement actions that reflect a potential consensus of the parties, and to promulgate a new regulation, if necessary, that reflects an amended decision for the 2008–2009 winter use season and beyond, consensus should be reached by June 1, 2008.

If the pass is closed at times to oversnow vehicle travel, the segment of road from the East Entrance to a point about four miles west, short of the Sylvan Pass avalanche zone, will be groomed and/or tracked for cross-country skiing. The commercial snowmobiles or snowcoaches authorized to operate from East Entrance may be allowed on that segment in order to provide skier drop-offs or shuttles. In addition, when the pass is not open due to safety, the road segment between Fishing Bridge and Lake Butte Overlook will be maintained for oversnow vehicle travel.

Beginning with the winter season of 2008–2009, the NPS will discontinue maintaining the Continental Divide Snowmobile Trail (CDST) as an oversnow vehicle route through most of Grand Teton and the Parkway, in essence converting this portion of the CDST into a trailered segment. Experience over the past several winters strongly suggests that the minimal amount of use on this route would not substantially increase since much of the previous use of the CDST was associated with visitors traveling through Yellowstone. The NPS recognizes that the guiding and air and sound emissions requirements for Yellowstone have contributed to a substantial reduction in the use of the CDST, since visitors have not been able to continue into Yellowstone without a guide and a snowmobile that meets the emissions requirements, as well as being subject to the daily entrance caps.

The NPS also recognizes, however, that snowmobile access to and from the Targhee National Forest is important to some visitors. While the CDST will no longer be maintained or designated for snowmobile use, the air and sound emissions requirements for the Grassy Lake Road will be removed beginning with the 2008–2009 winter season. Snowmobilers will be able to transport their machines by trailer between Moran and Flagg Ranch using plowed roads, in order to connect to the Grassy Lake Road and the national forest lands to the west of the Parkway. The daily entry limit of 25 is similar to the level of use that occurred in the past.

Summary of and Responses to Public Comments

The NPS published a proposed rule on May 16, 2007 (72 FR 27499) and accepted public comments through July 16, 2007. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: *http://www.regulations.gov.* A total of 1,450 people commented on the proposed rule, and 1,481 comment documents were received (some commentors submitted multiple letters). Thirty-seven letters were submitted electronically, and the remainder were submitted in paper form. Approximately 42% of commentors submitted form letters while the remaining 58% were unique letters.

Snowmobiles and Snowcoaches

1. *Comment:* The NPS should revise the proposed rule to prohibit the use of snowmobiles and require that all oversnow access to the parks be via snowcoaches.

Response: Snowcoaches and snowmobiles provide two very different types of experiences for park visitors seeking to enjoy Yellowstone during the winter. The use of both types of travel is well-established in the Parks, extending back more than 4 decades. In seeking to provide a range of opportunities and means to enjoy the Parks, the NPS believes that the managed use of both types of oversnow travel best meets that purpose and, as described in the FEIS and ROD, can be accomplished without harming the integrity of park resources or values. In addition, both types of access facilitate a wide range of non-motorized activities within the park by providing access to interior destinations such as Old Faithful and other areas that would otherwise be unreachable by the vast majority of visitors.

2. *Comment:* The use of snowmobiles results in a waste of resources and contributes to climate change.

Response: As disclosed in the FEIS, snowmobiles that currently meet the NPS's air and sound emissions requirements are more fuel-efficient than conventional snowmobiles and therefore contribute less to climate change. On a per capita basis, snowmobiles meeting NPS air and sound emissions requirements are slightly more fuel-efficient than snowcoaches, based on NPS analysis of current ridership and gas mileage within Yellowstone.

3. *Comment:* The proposed rule would continue to allow the use of snowcoaches, which would result in adverse impacts on air quality and the natural soundscape of Yellowstone.

Response: The NPS fully evaluated the impacts of snowcoaches on the air quality and natural soundscapes of Yellowstone, as described in the FEIS. The NPS recognizes that certain types of snowcoaches, predominantly the historic Bombardier models with upright exhaust stacks, operate with relatively high levels of noise and have been responsible for a large percentage of the instances in which sound levels exceeded adaptive management thresholds established by the NPS. Beginning with the 2011–2012 winter season, the NPS will require that all snowcoaches meet a noise emissions requirement of no greater than 73 dBA and an air emissions requirement that is the functional equivalent of having EPA Tier I emissions control equipment into the engine and drive train for the vehicle class (size and weight) as a wheeled vehicle. The NPS, through contracts and permits, will encourage snowcoaches to have EPA Tier II emissions control equipment for the vehicle class.

4. *Comment:* The NPS should require all snowcoaches to meet air and sound emissions requirements sooner than the 2011–2012 winter season.

Response: The NPS believes that the 4-year period allowed for the phase-in of air and sound emissions requirements is reasonable given the expense of upgrading snowcoaches to meet these requirements, and is necessary in order to avoid a disruption of visitor services.

Park Resource Issues

5. *Comment:* The use of snowmobiles under the proposed rule will continue to result in adverse impacts on air and water quality, natural soundscapes, vegetation, wildlife, visitor experience, and public health and safety.

Response: The NPS fully evaluated the environmental impacts of

snowmobile use in the Final Environmental Impact Statement (FEIS). The combination of daily entry limits, strict air and sound emissions requirements for snowmobiles, and the requirement that all snowmobilers travel with a commercial guide while visiting Yellowstone significantly mitigates the impacts of snowmobile use in the Parks. In order to further mitigate these impacts, the NPS has reduced the daily entry limits on snowmobiles to 540 per day in Yellowstone and 65 per day in Grand Teton and the Parkway. As stated in the FEIS and the ROD, the impacts resulting from the use of snowmobiles in the Parks will not harm the integrity of park resources and values.

6. *Comment:* Road grooming has unnaturally altered bison ecology.

Response: The NPS fully evaluated the impacts of snowmobile and snowcoach use on bison in the FEIS and responded to comments on this issue. As discussed above, the NPS is also implementing a research program to further study aspects of this issue.

7. *Comment:* The improvements in air quality as well as other improvements in environmental conditions in Yellowstone over the last several winters are attributable more to the lower numbers of snowmobiles that have been present rather than to the air and sound emissions requirements, guiding requirements, and daily entry limits (which allowed for more use than actually occurred).

Response: The NPS recognizes that the level of snowmobile use that occurred over the last three winters contributed to improvements in air quality and other environmental conditions. As described in the FEIS, however, these improvements are also attributable to the air and sound emissions requirements, guiding, and other elements of the temporary plan that has been in effect for the past several winters.

8. *Comment:* The NPS should not be attempting to manage for an unreasonable expectation that visitors may expect to enjoy natural quiet along with motorized travel within the Parks.

Response: Natural soundscapes are an important element of the Parks' resources and of visitors' enjoyment of the Parks. The NPS believes that it is obligated to protect that resource and allow for its enjoyment to the greatest extent possible, recognizing that in certain areas human-caused sounds will be evident much of the time. The sound emissions and guiding requirements, group sizes, daily entry limits, and other elements of the Winter Use Plan all contribute to reasonable opportunities for visitors to experience the natural soundscapes of the Parks, even along travel corridors.

9. *Comment:* Snowmobiles that meet the air and sound emissions requirements of the proposed rule do not produce intrusive sounds and have no adverse impacts on the Parks' natural soundscapes.

Response: As disclosed in the FEIS, snowmobiles meeting the NPS air and sound emissions requirements do produce noise, although at a reduced level from conventional two-stroke snowmobiles. In addition, the tonal qualities of these snowmobiles are different from conventional snowmobiles and may be perceived as less intrusive, and at the limits of audibility the low pitched sounds may not be distinguishable from natural sounds such as the wind. The requirement that most snowmobiles operating in the Parks meet NPS air and sound emissions requirements mitigates, but does not eliminate, impacts on the natural soundscapes.

10. *Comment:* The use of snowmobiles does not result in any environmental impacts on the parks.

Response: The environmental impacts of snowmobiles and snowcoaches were identified in the FEIS.

11. *Comment:* The analysis supporting the proposed rule did not properly consider recent studies, in particular the Bishop studies from 2006 and 2007, showing that snowcoaches and snowmobiles can have the same extremes in emissions—both high and low—and the proposed rule relies on studies not cited in the DEIS (C.C. Lela and J.J. White/Southwest Research Institute, ''Laboratory Testing of Snowmobile Emissions, Final Report,'' 2002).

Response: The proposed rule did use the Bishop studies and the FEIS in its analysis (Gary A. Bishop, Daniel A. Burgard, Thomas R. Dalton, Donald H. Stedman, and John D. Ray, 2006 ''In-use Emission Measurements of Snowmobiles and Snowcoaches in Yellowstone National Park,'' and Gary A. Bishop, Ryan Stadtmuller, and Donald H. Stedman, 2007 ''Portable Emission Measurements of Snowcoaches and Snowmobiles in Yellowstone National Park''). The 2006 study has been published (Winter Motor-Vehicle Emissions in Yellowstone National Park, Environmental Science & Technology (April 15, 2006): 2505–2510), and the 2007 study has been submitted for peer review. Both of these studies support the conclusion that although snowcoaches as a class can have both high and low emissions, the cleanest of the snowcoaches would produce emissions well below that of four-stroke snowmobiles, on a per capita basis. The NPS, in requiring Tier I emissions controls for snowcoaches with this rule (and encouraging the stricter Tier II emissions controls through contracts, as indicated in the FEIS), will be implementing snowcoach emissions requirements intended to be equal to or better than the emissions Bishop found in the cleanest group of snowmobiles, as detailed in the FEIS.

Guiding

12. *Comment:* The requirement over the last several winters that all visitors entering Yellowstone by snowmobile be accompanied by a commercial guide has resulted in adverse economic impacts on gateway communities, and these impacts will be perpetuated by the proposed rule.

Response: These and other economic impacts were disclosed and analyzed in the FEIS and in the economic analysis report that is summarized below. The NPS acknowledges that there have been some negative economic impacts to gateway communities and individual businesses located within those communities over the past several winters as a result of a decrease in snowmobile visitation to the Parks.

13. *Comment:* The requirement in the proposed rule that all snowmobilers be accompanied by a commercial guide while visiting Yellowstone largely eliminates the ability to experience the park on one's own terms, independent of a guided tour, thus diminishing the enjoyment of visiting the park.

Response: The NPS recognizes that the guiding requirement diminishes the opportunity to travel freely through the park independent of a commercially guided trip, but believes that such a requirement is a fundamental element of the successful approach to mitigating the impacts of motorized winter use. While some individuals may be discouraged from visiting the park because of this requirement, the NPS also recognizes that by traveling with a commercial guide, visitors have the ability to increase their understanding and appreciation of the park through frequent interaction with a knowledgeable and experienced trip leader.

14. *Comment:* Commercial guiding does not mitigate the impacts to natural soundscapes, wildlife, and safety.

Response: The effects of guiding on these resource topics were analyzed in the FEIS. Guiding has resulted in substantial noise-free intervals in the park because snowmobiles are clustered in groups and travel in more predictable

patterns. Commercial guiding is effective in minimizing human-wildlife conflicts, and the number of law enforcement and safety-related incidents has substantially decreased since the initiation of the commercial guiding requirement.

15. *Comment:* Commercially guided groups should continue to have a maximum size of 10 snowmobilers plus the guide on a separate snowmobile, rather than the 8 or 17 snowmobiles (depending on whether 1 or 2 guides are present) described in the proposed rule.

Response: In response to public comment and further discussions within the NPS, this section of the proposed rule has been revised to continue the existing maximum group size of 10 snowmobiles plus one guide, for a total of 11 snowmobiles.

16. *Comment:* The NPS should specify a minimum group size of two persons.

Response: The NPS does not believe it is necessary to designate a minimum group size since there will always be at least one person plus a guide.

17. *Comment:* The analysis supporting the proposed rule does not support the NPS's conclusions that the requirement for commercial guides results in mitigation of the impacts on soundscapes, wildlife, and safety. The analysis is flawed because groups accompanied by a non-commercial guide have not been allowed in Yellowstone since implementation of managed winter use in 2003, and therefore was not analyzed.

Response: The NPS believes that commercial guiding has been extremely successful and helped address problems that historically arose. A number of actions in the range of alternatives considered in the EIS have not occurred in practice, such as non-commercial guiding, road closures, improved air and sound emissions requirements for snowmobiles, and air and sound requirements for snowcoaches. This does not mean that those actions were not analyzed. Modeling and professional judgment were used to analyze these actions.

Sylvan Pass

18. *Comment:* The reasons and rationale presented by the NPS in the proposed rule for the closure of Sylvan Pass to oversnow vehicle travel are insufficient to support such an action. The rule should be revised to continue the use of Sylvan Pass as an oversnow route for snowmobiles and snowcoaches.

Response: The NPS and others have extensively studied the avalanche hazards at Sylvan Pass as well as potential ways of addressing those hazards. The NPS has concluded that there are serious risks to park employees, contractors, and visitors, and there may not be reasonable ways of ensuring that visitors or concessioners could depend on the pass being consistently open in light of the avalanche hazards, weather conditions, and other factors. However, the National Park Service will, in good faith, work cooperatively with the State of Wyoming, Park County, Wyoming and the town of Cody to determine how to provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass.

The National Park Service will meet with representatives of the State of Wyoming, Park County, Wyoming and the town of Cody to further explore reasonable avalanche and access mitigation safety measures and costs. In order to provide adequate time to implement actions that reflect a potential consensus of the parties for the 2008–2009 winter use season and beyond, consensus should be reached by June 1, 2008. Consistent with the decision explained in the ROD, the NPS has revised the final rule to reflect that the East Entrance Road through Sylvan Pass will continue to be designated as an oversnow vehicle route beyond the 2007–2008 winter season. The NPS will cease active avalanche control activities beginning with the 2008–2009 season, and the pass would be open to motorized and non-motorized travel when avalanche forecasting indicates that travel through the pass is safe.

19. *Comment:* The NPS has used the low number of visitors using the East Entrance during the winter as a reason for proposing to close Sylvan Pass to oversnow vehicle use.

Response: Although the number of visitors using the East Entrance has been fairly low recently and historically, the basis for the proposal to close Sylvan Pass to oversnow vehicle use was that avalanche hazards to employees and visitors exist. As described above and in the ROD, the National Park Service will, in good faith, work cooperatively with the State of Wyoming, Park County, Wyoming and the town of Cody to determine how to provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass.

20. *Comment:* The NPS is inconsistent in its approach to public health and safety at Sylvan Pass because the proposed rule prohibits the use of oversnow vehicles through the pass due to the danger of avalanches, while permitting non-motorized users to ski or snowshoe through the same area in the absence of any avalanche control efforts.

Response: In the Final Rule, motorized and non-motorized travel over Sylvan Pass are treated the same.

21. *Comment:* Closure of the East Entrance to Yellowstone for the winter season would result in negative socioeconomic impacts on communities that depend on winter tourism.

Response: The National Park Service has revised the final rule, and will in good faith work cooperatively with the State of Wyoming, Park County, Wyoming and the town of Cody to determine how to provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass. The NPS recognizes that the closure of the East Entrance during the winter would result in some economic impacts on Cody and Park County, Wyoming. While some individual businesses would likely be adversely affected by the closure of the East Entrance, the overall effect on the area's economy would have been minor since winter tourism is only one component of the economy (see FEIS, pages 207–210). These and other economic impacts were disclosed and analyzed in the FEIS and in the economic analysis report that is summarized below. The full documents are available online at *http://www.nps.gov/yell/planyourvisit/winteruse.htm.*

22. *Comment:* An economically sustainable winter recreation program for Cody and the North Fork area would not be supportable if Sylvan Pass were to be closed.

Response: The NPS acknowledges that some economic impacts on Cody and the North Fork area would result from the closure of Sylvan Pass, and that some individual businesses could be particularly impacted. The NPS believes that a variety of recreation opportunities would continue to be available in Cody and the North Fork area. As described above, the National Park Service has revised the final rule, and will in good faith work cooperatively with the State of Wyoming, Park County, Wyoming and the town of Cody to determine how to safely provide continued snowmobile and snowcoach motorized oversnow access to the interior of Yellowstone National Park through the East Gate via Sylvan Pass.

23. *Comment:* Closure of Sylvan Pass to oversnow vehicles would deprive visitors of the opportunity to experience and enjoy that area of the park.

Response: As discussed above, our revised decision will provide such access during periods when it is safe to do so. During the periods when Sylvan Pass is closed due to avalanche risk, the first several miles of the road between the East Entrance and Sylvan Pass will continue to be maintained for persons wishing to experience the area on skis or snowshoes, with drop-offs possible by snowcoach or snowmobile.

24. *Comment:* The following statement on page 27510 of the proposed rule is not true for communities and businesses in Park County, Wyoming: ''The preferred alternative also supports the communities and businesses both near and far from the park and will encourage them to have an economically sustainable winter recreation program that relies on a variety of modes and access to the parks in the winter.''

Response: The NPS has in both the FEIS and ROD stated its support for working with communities and businesses in Park County in a variety of ways to mitigate the impacts of changes in access to the East Entrance. As described above, the National Park Service has revised the final rule, and will in good faith work cooperatively with the State of Wyoming, Park County, Wyoming, and the town of Cody to determine how to safely provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass.

25. *Comment:* What is the rationale for the one-year delay in implementing the closure of Sylvan Pass and who would benefit from that delay?

Response: The NPS believes that a delay in transitioning to a different method of managing risk on Sylvan Pass is appropriate in order to give local businesses and communities that may be affected by the change in access time to adjust. Also the one year delay provides the opportunity for the National Park Service, in good faith, to work cooperatively with the State of Wyoming, Park County, Wyoming and the town of Cody to determine how to provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass in the winter use seasons beyond 2007–2008.

The National Park Service will meet with representatives of the State of Wyoming, Park County, Wyoming, and the town of Cody to further explore reasonable avalanche and access mitigation safety measures and costs. In order to provide adequate time to implement actions that reflect a potential consensus of the parties, consensus should be reached by June 1, 2008.

Socioeconomics

26. *Comment:* The analysis supporting the proposed rule did not properly consider the long-term socioeconomic impacts on gateway communities.

Response: The potential socioeconomic impacts are described in Section 4.2.2 of the FEIS.

27. *Comment:* The economic analysis indicates that Alternative 2, the ''snowcoach only'' alternative, has the second highest level of quantified net benefits, which seems high since combined skier and snowcoach entries have never accounted for more than about 20 percent of total park winter visitation.

Response: Quantified net benefits, as represented by consumer surplus, is different from total number of visitors and total spending by visitors. Consumer surplus is the monetized measure of the value or enjoyment of the visit to the visitor. Under Alternative 2, snowcoach riders placed a very high value on visiting the park without snowmobiles. Also, according to actual visitation statistics presented in the FEIS, car passengers are by far the largest group of winter visitors in Yellowstone, composing almost 50%. Collectively, car riders, snowcoach riders and skiers make up a little over 2/3 of the winter visitors. Finally, skiers are not just people who entered the park by ski, but people for whom skiing was the primary activity in YNP (6% of visitors according to the 2002–2003 survey). These people may have actually entered the park driving a car or riding a snowcoach or snowmobile.

28. *Comment:* The analysis supporting the proposed rule is inconsistent because it uses historical snowmobile use levels as the baseline for some resources but does not use that baseline for the economic analysis.

Response: The Office of Management and Budget requires that for rulemaking purposes the economic analysis use as a baseline a condition that is absent the federal rulemaking. In this case, that corresponds to a situation where no oversnow vehicle use would be authorized in the Parks. For other impact topics, the comparison to historical conditions was intended to allow the reader to understand the differences between each alternative and conditions that previously existed, and between the alternatives themselves, including the no action alternative.

29. *Comment:* The Parks are important economically to the surrounding counties, and citizens expect reasonable access to the Parks.

Response: The NPS agrees with this statement and recognizes the economic significance of the Parks to the surrounding communities, which is described in the economic analysis in the FEIS, and summarized in this rule. The NPS believes that the management of winter use that will occur under this rule provides visitors with an appropriate range of activities and experiences while ensuring that the integrity of park resources and values is not harmed.

Designated Routes and Daily Entry Limits

30. *Comment:* The NPS should restrict the number of snowcoaches to no more than 50 per day in order to maximize the occupancy of each coach.

Response: We believe that the ROD and this rule reflect an adequate balance between snowmobile and snowcoach access to the interior of Yellowstone in the winter while protecting park resources and values. The number of snowcoaches operating in Yellowstone over the past several winters has been less than the 78 per day that were authorized, although snowcoach ridership has been on an upward trend. While snowcoach operators strive to maximize occupancy, the actual number of people per coach is dependent on a number of factors such as group sizes, scheduling, charters, and equipment availability. The NPS expects that as demand for snowcoach tours increases, the number of coaches operating in the park will increase commensurate with the demand, and occupancy rates may also increase to some degree. The NPS retains the flexibility to defer the increase from 78 to 83 to the next snowcoach contracts.

31. *Comment:* The NPS should manage snowmobile use by regulating the number of groups instead of individual snowmobiles.

Response: The NPS recognizes that managing by the number of snowmobile groups using the parks rather than the actual number of snowmobiles is another possible method that could be used to allocate daily entries. Such an alternative was considered but dismissed from detailed consideration in the FEIS. The NPS believes that allocating a set number of snowmobile entries per entrance with an upper limit on the number of snowmobiles per group provides guides with the greatest flexibility. Under a daily group limit, some groups would not be filled to the group size limit. Managing visitor use

by a daily entrance limit allows more visitors to tour the park. Also, an inherent part of the analysis, especially for soundscapes, was the concept of grouping snowmobiles. Nonetheless, the NPS does not wish to discourage operators from taking smaller groups or charters since this type of individual service is desired by some visitors.

32. *Comment:* The NPS should extend the hours for access to Firehole Canyon, North Canyon Rim Drive, and Riverside Drive in Yellowstone to provide more flexibility for guided tours.

Response: The NPS believes that restricting the hours during which snowmobiles may access these areas allows for a separation of snowmobile and snowcoach use which provides opportunities for an enhanced experience for some visitors.

33. *Comment:* The NPS should either prohibit the use of snowmobiles in the parks, or if they are allowed, the daily entry limits should be very low.

Response: The NPS has reduced the number of snowmobiles allowed to enter Yellowstone each day from 720 in the proposed rule to 540 in the final rule. Similarly, the number of snowmobiles allowed in Grand Teton and the Parkway was reduced from 140 per day in the proposed rule to 65 per day in the final rule. The numbers of snowmobiles allowed in the parks under this rule take into account the analysis of public comment, feedback from public meetings, review of the 2006 NPS Management Policies, additional monitoring data, and additional analysis and modeling completed since publication of the proposed rule and DEIS.

34. *Comment:* The NPS should allow some percentage of the daily snowmobile entries for Yellowstone to consist of either unguided or non-commercially guided groups, perhaps in conjunction with a certified leader program.

Response: The NPS considered two distinct alternatives that allowed either 20 or 25 percent of snowmobiles to enter Yellowstone either with a non-commercial guide or unguided. Based on the experience of the past several winters and additional analysis presented in the FEIS in support of this rulemaking, the NPS concluded that the requirement that 100% of the snowmobile use be commercially guided is both appropriate and necessary to adequately mitigate the impacts of the use on park resources and values.

35. *Comment:* The use of snowmobiles and snowcoaches should be restricted to certain designated routes.

Response: Consistent with the requirements of 36 CFR 2.18(c), the use of snowmobiles and snowcoaches under the proposed rule was, and this final rule continues to be, restricted to designated routes that are the same as roads that are used by motor vehicles during other seasons of the year, or in the case of Jackson Lake, by motorboats during the summer months. Only a portion of the Parks' road systems is groomed for oversnow vehicle use. The use of snowmobiles or snowcoaches off of designated routes is prohibited.

Grand Teton and the John D. Rockefeller, Jr. Memorial Parkway

36. *Comment:* The NPS should allow the use of ''EPA Compliant'' snowmobiles on Jackson Lake, the Continental Divide Snowmobile Trail, and the Grassy Lake Road. EPA compliant would be defined as a 2007 model year or later snowmobile that meets or exceeds the Environmental Protection Agency's requirements for air emissions.

Response: The NPS considered this concept but believes that it would not be as effective in mitigating the noise associated with snowmobiles as the air and sound emissions requirements described in the proposed rule. The EPA regulations pertain only to air emissions and therefore would not necessarily result in any noticeable reduction of noise. In addition, EPA air emission regulations are not as strict as NPS air requirements in this rule.

37. *Comment:* The NPS should consider the CDST and Grassy Lake Road as one segment and manage it primarily for the use of long-distance snowmobile tours that originate and terminate outside of the parks in order to facilitate travel between points in Wyoming and destinations in Idaho and Montana.

Response: The NPS considered but rejected this concept because it would have also involved the use of ''EPA Compliant'' snowmobiles on the CDST, which would not address noise issues as discussed in the previous response. In lieu of this proposal, however, the NPS will allow two-way use of the Grassy Lake Road without any restrictions on the type of snowmobiles that may be used, and allow a daily limit of 25 per day. While snowmobiles will have to be hauled by trailer between Moran Junction and Flagg Ranch, this change will improve access to the adjacent public lands in the Targhee National Forest and beyond.

Consistency With Laws and Policies

38. *Comment:* By allowing for the use of snowmobiles in the Parks, the proposed rule is inconsistent with the NPS Management Policies 2006, which require that conservation must be the priority when there is a choice between visitor access and use of the parks and protection of park resources and values.

Response: Throughout the planning process that supports this rulemaking, the concept of providing a range of appropriate activities and experiences for park visitors has remained constant. For the reasons stated in the ROD, this concept as well as this rule are fully in accordance with the NPS Organic Act, the NPS Management Policies 2006, executive orders, and other authorities pertaining to management of the National Park System. The NPS believes that the carefully regulated and monitored use of snowmobiles is part of an appropriate range of winter activities. Throughout the process supporting this rulemaking, the NPS has heard from and listened to commentors expressing a wide variety of viewpoints on the issue, and recognizes the difficulty in reconciling the many differences in opinion.

39. *Comment:* Implementation of the proposed rule would result in the NPS violating the NPS Organic Act and other applicable mandates.

Response: The NPS determined in the FEIS and the ROD that the actions that are to be implemented under this rule will not result in unacceptable impacts or impairment and thus will not violate the Organic Act, or any other law, regulation or policy.

40. *Comment:* The Clean Air Act and NPS Management Policies 2006 require the National Park Service to maintain the best possible air quality in the parks.

Response: At present, with oversnow vehicle use levels similar to what would likely be experienced under these rules (including the air quality on the busiest days, with oversnow vehicle numbers at or near the maximum that will be allowed under these rules), air quality in the parks has been in full compliance with the requirements of the Clean Air Act and NPS Management Policies. Under the interim plan, NPS found that both carbon monoxide and particulate levels were well below national standards; carbon monoxide levels were a tenth of the national standard and particulate levels were less than one-fourth of the standard, as documented in the FEIS.

Miscellaneous

41. *Comment:* The NPS should establish December 15 and March 15 as fixed dates for the opening and closing dates of the winter use season in Yellowstone.

Response: Beginning with the winter season of 2008–2009, Yellowstone's winter season is defined as the period from December 15 to March 15. Actual opening and closing dates for oversnow travel, however, will continue to be determined based on the presence of adequate snowpack or snow water equivalency as has been done for a number of years. Additionally, an early March closing of Yellowstone's Mammoth Terraces oversnow entrance and the roads from Norris to Madison and Norris to Canyon will continue to occur to facilitate spring plowing.

42. *Comment:* The NPS should use a lottery system for allocating entries into Yellowstone.

Response: The NPS believes that the existing system of allocating entries through concessions contracts and permits is the most appropriate method, especially in the context of the guiding requirement.

43. *Comment:* The NPS should consider expanding opportunities for non-motorized recreation in the parks by grooming additional areas for cross country skiing.

Response: This rulemaking does not affect the ability of the NPS to consider such actions.

44. *Comment:* The NPS should continue to provide a preferential right of renewal of long-time, small concessioners.

Response: Concessions contracting issues are beyond the scope of this rulemaking and are addressed in 16 U.S.C. 5951–5966 and 36 CFR part 51.

45. *Comment:* The analysis supporting the proposed rule did not properly consider the long-term impacts from climate change on winter activities in the parks.

Response: The NPS addressed climate change in Section 1.5 of the FEIS. Climate change may affect winter precipitation patterns and amounts in the parks, but it would be speculative to predict changes in snow water equivalency or average winter temperatures. The FEIS did analyze the impacts of plowing Yellowstone's lower elevation roads, which may be a viable adaptive management strategy in response to changing weather patterns.

46. *Comment:* The analysis supporting the proposed rule did not adequately consider the cumulative environmental impacts to nearby national forest lands.

Response: The potential direct, indirect, and cumulative effects on lands, including national forests, within the Greater Yellowstone Area are discussed in Section 4.4 of the FEIS. The U.S. Forest Service was a cooperating agency on this FEIS in order to provide technical information and provide technical review on topics related to their special expertise, including cumulative impacts on adjacent forest lands.

47. *Comment:* The NPS should require snowmobilers to purchase park entrance permits in the gateway communities rather than at the entrance stations in order to reduce congestion and air pollution at the park entrances.

Response: The park entrance fee is included in the package that visitors purchase from the commercial tour operators prior to entering the park, which also typically includes the costs of the snowmobile rental and snowmobile suit rental, as well as the guide fee. Guides provide a voucher to the NPS indicating the number of visitors, and the operator is subsequently billed the appropriate amount. This procedure eliminates the need for a separate transaction at the gate for each visitor. The requirement that all snowmobilers be part of a commercially guided tour facilitates this practice.

48. *Comment:* Gateway communities, concessioners, visitors, and snowmobile-related businesses have suffered economic impacts as a result of restrictions on use and misinformation regarding the extent to which the parks were open.

Response: The NPS recognizes that some of the decrease in winter visitation to the parks over the past several winters may have been the result of potential visitors to the parks being confused or unaware as to whether and to what extent the parks were open. The NPS has made every effort to ensure that the public was aware that the parks were open and that an appropriate range of activities for their enjoyment was available, and will continue to do so in the future.

49. *Comment:* Revenue from snowmobile use of the parks provides funds that may be used by the NPS to support operations of the park throughout the year.

Response: The parks retain 80% of the entrance fee revenue generated by visitation, with the remaining funds distributed for use elsewhere in the National Park System. While the funds derived from the winter season are a relatively small component of the Parks' budgets, those funds are important to operation and management of the Parks, and are used in accordance with applicable laws, regulations, and policies.

50. *Comment:* The NPS should strictly enforce park regulations.

Response: The NPS strictly enforces applicable federal laws and regulations within the Parks. Under the temporary plan that has been in effect the past three winters, NPS found that there was a significant increase in compliance with park regulations which is attributable to the commercial guiding requirement.

51. *Comment:* The NPS should not have initiated the rulemaking process until after the FEIS and Record of Decision were completed.

Response: Publication of the proposed rule shortly after release of the DEIS provided the public with two separate opportunities to comment on the winter use planning and regulation processes prior to the NPS reaching a decision, and did not limit the NPS in its decision-making. In fact, as a logical outgrowth of these comment processes, the NPS developed and presented a new preferred alternative in the FEIS and released the ROD and this final rule based on that new alternative.

52. *Comment:* The fees that park visitors must pay for commercial guiding services represent the unlawful levy of a tax.

Response: The fees paid by visitors to commercial guides are for services rendered and are not a tax.

53. *Comment:* The NPS should not rely on, nor make reference to the 2000 FEIS and related Record of Decision in this rulemaking since both of these documents were invalidated by the Wyoming District Court, and the conclusion within them that snowmobile use impaired park resources was legally and factually wrong.

Response: The references to the 2000 FEIS and Record of Decision are necessary to properly explain the history and context of the winter use issue and this rulemaking. The NPS does not dispute that both of these documents were vacated by the Wyoming District Court and remanded to the agency on procedural grounds. The Wyoming District Court did not find the conclusions regarding impairment to be incorrect, and found that the Record of Decision was within the discretion of the NPS under the Organic Act. This rulemaking does not rely on either document.

54. *Comment:* The Wyoming Department of Game and Fish should be allowed to access Jackson Lake for purposes associated with management of the fishery.

Response: Except where noted, the rule applies to the use of recreational snowmobiles in the Parks. The NPS has previously indicated to the Wyoming Department of Game and Fish that the use of 2-stroke snowmobiles for administrative purposes will be allowed

on Jackson Lake, but strongly encourages the use of snowmobiles meeting NPS air and sound emissions requirements unless necessary under the circumstances.

Changes to the Final Rule

After taking the public comments into consideration and after additional internal review, several changes were made to the final rule, in addition to non-substitutive editorial changes made to improve clarity of the rule. These changes are as follows:

First, paragraphs 7.13(l)(6)(ii), 7.21(a)(6)(ii), and 7.22(g)(6)(ii) for Yellowstone, the Parkway, and Grand Teton, respectively, have been revised to indicate that the NPS may in the future utilize an updated SAE J192 procedure in order to certify which makes and models of snowmobiles meet NPS sound emissions requirements.

Second, paragraph (7) in § 7.13(l) has been revised to reflect the decision that the East Entrance Road through Sylvan Pass will continue to be designated for oversnow vehicle use beyond the 2007–2008 winter season.

Third, paragraph (9) of both § 7.13(l) and § 7.21(a) has been revised to require that group sizes may not exceed eleven snowmobiles, including that of the guide. This change was based in large part on public comment that indicated that groups of this size worked well and that the proposed change was not necessary.

Fourth, the tables in § 7.13(l), § 7.21(a), and § 7.22(g) have been revised to reflect the reduction in the number of snowmobiles permitted each day in each of the 3 park units, as well as the slight increase in the number of snowcoaches allowed in Yellowstone. As described earlier, these changes were made primarily in order to provide greater protection of the Parks' air quality and natural soundscapes while ensuring that visitors are afforded an appropriate range of experiences. The tables have also been revised to reflect an allocation of 30 snowmobiles and two snowcoaches per day to the East Entrance, thereby slightly reducing the allocations at the North and South Entrances. Footnotes to Table 1 in § 7.13(l) have also been revised to indicate that the specific allocations for each entrance of Yellowstone may be adjusted based on concession contract requirements, not to exceed 540 snowmobiles and 83 snowcoaches per day. Fifth, paragraph (6) of § 7.21(a) has been revised to indicate that beginning with the winter season of 2008–2009, air and sound emissions requirements will not apply to snowmobiles being operated on the Grassy Lake Road, regardless of whether travel originates at Flagg Ranch or in the Targhee National Forest. The purpose of this change is to improve access to the recreational opportunities in the adjacent national forest lands.

Sixth, paragraph (7) of § 7.21(a) has been revised to indicate that the Continental Divide Snowmobile Trail and the route between the Snake River Bridge and Flagg Ranch is designated for oversnow vehicle use only through the winter season of 2007–2008.

Seventh, paragraph (7) of § 7.22(g) has been revised to reflect that the segment of the Continental Divide Snowmobile Trail between the Moran Entrance Station and the north boundary of Grand Teton is designated for snowmobile use only through the winter season of 2007–2008.

Summary of Economic Analysis

Introduction

This section summarizes an analysis conducted by the National Park Service of the costs and benefits, and impacts on small entities associated with this rule. The analysis is contained in the report titled ''Economic Analysis of Winter Use Regulations in the Greater Yellowstone Area'' (RTI International, September 2007), which is available at *http://www.nps.gov/yell/planyourvisit/winteruse.htm*. It should be noted that the report was based upon the preferred alternative in the FEIS, which was Alternative 7. Under this alternative, Sylvan Pass would have been closed to oversnow vehicle use beginning with the winter season of 2008–2009. The Record of Decision, however, allows for Sylvan Pass to remain open, and therefore presents a slightly different scenario than contained in the economic analysis. The costs and benefits presented in the economic analysis are therefore likely to be slightly different than if the report was based on the pass being kept open, but not significantly enough to require a new economic analysis.

The analysis examines seven action alternatives for winter use plans in the Greater Yellowstone Area (Yellowstone National Park, Grand Teton National Park, and John D. Rockefeller, Jr. Memorial Parkway). In Yellowstone National Park, Alternative 1 represents conditions under the temporary winter use rule with some exceptions, including closing the East Entrance. Alternative 2 prohibits snowmobile access but allows for snowcoaches, while leaving the East Entrance closed. Alternative 3a allows guided snowmobile and snowcoach use, but only through the South Entrance. The other four action alternatives allow snowmobile and snowcoach use subject to daily entrance limits and with some guided tour requirements. Alternatives 4 and 5 allow for 25% and 20% unguided or non-commercially guided use, respectively, along with snowcoach use. Alternative 6 allows for another winter use of Yellowstone National Park—commercially guided wheeled vehicle use through the West Entrance, which would be plowed from Mammoth to the West Entrance to Old Faithful. Guided snowmobile and snowcoach use would be allowed out of the South Entrance and from Old Faithful and Norris. Alternative 7 allows for 540 snowmobiles and 83 snowcoaches per day in Yellowstone and closes the East Entrance to oversnow vehicle use beginning with the 2008–2009 winter season. Alternative 7 also allows 65 snowmobiles per day for Grand Teton and the Parkway.

In Grand Teton National Park, Alternatives 1, 3, 5, and 6 allow for all snowmobiles to ride unguided up to varying daily caps. Alternative 4 allows a mixture of guided and unguided snowmobiles, while Alternative 2 bans snowmobiles. Under Alternatives 1, 4, and 5, the Grassy Lake Road, the Continental Divide Snowmobile Trail (CDST), and Jackson Lake remain open for snowmobiles. Only the Grassy Lake Road is open under Alternative 3a, while Alternative 6 allows snowmobiles on the Grassy Lake Road and Jackson Lake.

The National Park Service identified Alternative 7 as the preferred alternative in the FEIS, and adopted that alternative, with some modifications, in the ROD. Alternative 7 combines aspects of several of the other alternatives, especially Alternatives 1 and 5. In Yellowstone National Park, snowmobiles must be on guided tours, as in Alternative 1. The total daily limit for snowmobiles is the same as Alternative 5, although the limit is distributed differently across the entrances and the East Entrance is closed to snowmobiles. In Grand Teton National Park, the CDST will no longer be maintained, and snowmobiles traveling the trail must be hauled by trailer across it. With the closing of the CDST in Grand Teton National Park, the daily limit on snowmobiles is lower than the other alternatives.

The analysis estimates the benefits and costs associated with these seven action alternatives relative to the baseline, which is Alternative 3b. Baseline describes the conditions that would occur if the proposed regulations that are currently under consideration were not implemented. Under those

baseline conditions, recreational oversnow vehicle access would cease in all three parks. The estimated benefits and costs summarized here are incremental to the baseline. That is, these estimates are calculated as the additional benefits and costs the public would experience under each of the action alternatives as compared to the baseline conditions described by Alternative 3b.

The purpose for estimating these benefits and costs is to examine the extent to which each action alternative addresses the need for the proposed regulations. These regulations are needed to correct certain ''market failures'' associated with winter use in the parks. A market failure occurs when park resources and uses are not allocated in an economically efficient manner. For winter use in the parks, market failures occur as a result of ''externalities.'' An externality exists when the actions of some individuals impose uncompensated impacts on others. For example, snowmobile and snowcoach users impose costs on other park visitors in the form of noise, air pollution, congestion, and health and safety risks. Because these costs are not compensated, snowmobile and snowcoach users have little or no incentive to adjust their behavior accordingly. The proposed regulations are needed to correct this situation.

The quantitative results of the analysis are summarized below. It is important to note that the analysis could not account for all benefits or costs due to limitations in available data. For example, the costs associated with adverse impacts to park resources such as wildlife, and with law enforcement incidents, are not reflected in the quantified net benefits presented in this summary. It is also important to note that the analysis addresses the economic efficiency implications of the different action alternatives and not their distributive equity (i.e., it does not identify the sectors or groups on which the majority of impacts fall). Therefore, additional explanation is required when interpreting the quantitative results of the analysis. An explanation of the selection of the preferred alternative is presented following the summary of quantified benefits and costs.

Quantified Benefits and Costs

The analysis of benefits and costs critically depends on estimates of visitation for the different user groups. While significant information is available from past visitation records and visitor surveys, a degree of uncertainty exists about how these visitation levels might change in the future under the seven action alternatives. In previous rulemakings involving winter use plans in the Greater Yellowstone Area, this uncertainty was addressed by making bounding assumptions to place upper and lower limits on a reasonable range of visitation. For this rulemaking, a more sophisticated approach was used to better characterize uncertainty and to estimate expected levels of visitation. That approach involves specifying probability distributions of key visitation parameters, and then sampling from those distributions in order to estimate visitation levels. By taking multiple samples, measures of central tendency for visitation can be calculated that reflect the uncertainty in the available data. This analysis used 1,000 samples, which were adequate to calculate expected levels of visitation. Those expected visitation levels were then used to estimate the benefits and costs described below for the seven action alternatives.

The primary beneficiaries of Alternatives 1, 2, 3a, 4, 5, 6, and 7 relative to the Alternative 3b baseline are the park visitors who ride snowmobiles or snowcoaches in the park and passengers on the proposed commercial bus tours and the businesses that serve them. Benefits and losses accruing to individual visitors are called consumer surplus changes and those accruing to businesses are called producer surplus changes. Consumer surplus measures the net economic benefit obtained by individuals from participating in their chosen activities, while producer surplus measures the net economic benefit obtained by businesses from providing services to individuals.

Overall, Alternative 6 is estimated to provide the greatest consumer surplus benefits due to the commercial bus access. The daily caps on snowmobile use vary across the seven alternatives, with Alternative 4 allowing the most snowmobiles per day into the parks. Alternatives 1, 3a, 6, and 7 require snowmobilers to be part of a guided tour in Yellowstone National Park, a requirement that is expected to reduce the consumer surplus gains to snowmobilers who prefer unguided tours or who face additional expenses from taking a guided tour. Alternatives 4 and 5 allow for at least 20 percent of the tours to be unguided or led by non-commercial guides, which may somewhat mitigate the potential loss in consumer surplus associated with the guided tour requirement.

The primary consumer group that would incur costs under Alternatives 1, 2, 3a, 4, 5, 6, and 7 would be the park visitors who do not ride oversnow vehicles. Alternative 2 results in the smallest losses for these visitors. Out of the set of alternatives that allow for continued snowmobile access to the parks, Alternative 6 is expected to impose the lowest costs on non-snowmobile users because of the lower daily limits, guided tour requirements, and restriction of oversnow vehicles to the South Entrance.

For businesses, the producer surplus gains relative to the Alternative 3b baseline are expected to be ordered similar to the way consumer surplus gains are for snowmobilers and snowcoach riders because they are driven largely by the number of visitors. Alternative 6 is expected to have the greatest positive impact on local businesses because the bus access is expected to result in the largest increase in visitation. Alternative 4, which allows the most snowmobiles and the most unguided snowmobiles, offers the second highest benefit to producers.

The average net benefit levels quantified in the analysis are presented in Tables 1 and 2 below. Table 1 presents the total present value of quantified net benefits over the ten-year analysis period for winter seasons 2007–2008 through 2016–2017. Table 2 presents quantified net benefits per year for the same analysis period. These average net benefit levels are entirely positive for all seven action alternatives, relative to the Alternative 3b baseline.

TABLE 1.—TOTAL PRESENT VALUE OF QUANTIFIED NET BENEFITS RELATIVE TO THE ALTERNATIVE 3B BASELINE, GREATER YELLOWSTONE AREA, 2007–2008 THROUGH 2016–2017

	Total present value of quantified net benefits
Alternative 1:	
Discounted at 3% [a]	$63,396,000
Discounted at 7% [a]	51,836,000
Alternative 2:	
Discounted at 3% [a]	142,994,000
Discounted at 7% [a]	117,328,000
Alternative 3a:	
Discounted at 3% [a]	52,101,000
Discounted at 7% [a]	42,704,000
Alternative 4:	
Discounted at 3% [a]	36,656,000
Discounted at 7% [a]	30,016,000
Alternative 5:	
Discounted at 3% [a]	39,344,000
Discounted at 7% [a]	32,329,000
Alternative 6:	
Discounted at 3% [a]	248,834,000
Discounted at 7% [a]	204,405,000
Alternative 7:	
Discounted at 3% [a]	63,387,000

TABLE 1.—TOTAL PRESENT VALUE OF QUANTIFIED NET BENEFITS RELATIVE TO THE ALTERNATIVE 3B BASELINE, GREATER YELLOWSTONE AREA, 2007–2008 THROUGH 2016–2017—Continued

	Total present value of quantified net benefits
Discounted at 7% [a]	51,823,000

Note: All values are in 2003 dollars, and have been rounded to the nearest $1,000.

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 2.—QUANTIFIED NET BENEFITS PER YEAR RELATIVE TO THE ALTERNATIVE 3B BASELINE, GREATER YELLOWSTONE AREA, 2007–2008 THROUGH 2016–2017

	Quantified net benefits per year [b]
Alternative 1:	
Amortized at 3% [a]	$7,432,000
Amortized at 7% [a]	7,380,000
Alternative 2:	
Amortized at 3% [a]	16,763,000
Amortized at 7% [a]	16,705,000
Alternative 3a:	
Amortized at 3% [a]	6,108,000
Amortized at 7% [a]	6,080,000
Alternative 4:	
Amortized at 3% [a]	4,297,000
Amortized at 7% [a]	4,274,000
Alternative 5:	
Amortized at 3% [a]	4,612,000
Amortized at 7% [a]	4,603,000
Alternative 6:	
Amortized at 3% [a]	29,171,000
Amortized at 7% [a]	29,103,000
Alternative 7:	
Amortized at 3% [a]	7,431,000
Amortized at 7% [a]	7,378,000

Note: All values are in 2003 dollars, and have been rounded to the nearest $1,000.

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

[b] This is the total present value of quantified net benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.

Interpretation of Quantified Benefits and Costs

The National Park Service selected Alternative 7 as the preferred alternative; however, Alternatives 2 and 6 each have higher levels of quantified net benefits. Alternative 1 generates essentially the same level of quantified net benefits. Additional factors that are relevant in the selection of the preferred alternative include costs that could not be quantified and distributive equity concerns. With respect to costs that could not be quantified, Alternative 6 involves road plowing operations and possibly moderate, adverse visibility impacts due to road sanding operations, neither of which were quantified in terms of monetized costs. Monetizing these costs would reduce the quantified net benefits of Alternative 6 relative to those of Alternative 7.

With respect to distributive equity concerns, Alternative 7 better balances the visitor experiences of all visitor groups compared to all other action alternatives. The costs and benefits accruing to the different visitor groups are more evenly distributed in Alternative 7 than in Alternative 2 or Alternative 6. The benefits of Alternative 2 are disproportionately associated with snowcoach riders. The benefits to snowmobile riders in Alternative 6 will be concentrated on riders who have access to the South Entrance. Finally, the lack of any historical precedent for plowing roads and allowing commercial bus tours during the winter leads to large uncertainties as to the magnitude of the benefits associated with Alternative 6. For these reasons, the National Park Service selected Alternative 7 as the preferred alternative.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis has been completed and is available upon request. These conclusions are based on the report ''Economic Analysis of Winter Use Regulations in the Greater Yellowstone Area'' (RTI International, September 2007).

(b) This rule will not create inconsistencies with other agencies' actions. The National Park Service is unaware of any other Federal rules that duplicate, overlap, or conflict with this rule.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The National Park Service has been the subject of numerous lawsuits regarding its management of winter use in the Parks.

Regulatory Flexibility Act

The National Park Service has determined that this rule will have a significant positive economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), in comparison to conditions that would exist absent this rule. Therefore, a Final Regulatory Flexibility Analysis has been conducted and is available upon request. This analysis is contained in the report ''Economic Analysis of Winter Use Regulations in the Greater Yellowstone Area'' (RTI International, September 2007).

Alternative 4 has the highest daily snowmobile limits and allows for 25% of snowmobilers to be on non-commercially guided or unguided tours; it would most likely result in the largest number of snowmobilers visiting the park. Thus, Alternative 4 would likely be the most beneficial to small businesses overall. However, Alternative 6, which allows guided commercial wheeled access to parts of the park through the North and West Entrances, is forecast to have the highest visitation. Visitation under Alternative 6 is the most uncertain because of the commercial wheeled access provision.

Small businesses near the East Entrance and the town of Cody, Wyoming, would benefit more from Alternatives 4 and 5, which allow snowmobile traffic through the East Entrance. The East Entrance would be closed to snowmobile traffic under both the no-action alternative and Alternative 7.

Nevertheless, a modified version of Alternative 7 was selected as the preferred alternative in part because it balances the visitor experiences of all modes of access compared to all other action alternatives. NPS believes that balance will benefit small businesses associated with all modes of access.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. This conclusion is based on the report ''Economic Analysis of Winter Use Regulations in the Greater Yellowstone Area'' (RTI International, September 2007).

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or

local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S.-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

An Environmental Impact Statement (EIS) and Record of Decision (ROD) have been completed. The EIS and ROD are available for review by contacting Yellowstone or Grand Teton superintendent offices or can be found at: *www.nps.gov/yell/parkmgmt/winterusetechnicaldocuments.htm*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

The NPS has evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the previous NEPA processes. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and limits on snowmobile numbers.

Administrative Procedure Act

This rule is effective on December 19, 2007. The National Park Service recognizes that new rules ordinarily go into effect thirty days after publication in the **Federal Register**. For this regulation, however, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective on December 19, 2007. This rule implements the winter use plans for the Parks and relieves the restrictions on the use of snowmobiles and snowcoaches that would exist in its absence. In addition, good cause exists for the effective date of December 19, 2007, for the following reasons:

(1) The NPS has in good faith since at least March 2006 publicly stated that the 2007–2008 winter season for the Parks would commence on December 19, 2007, and the public and businesses have made decisions based on the widespread public knowledge of this opening date.

(2) Since March 2006, the NPS has consistently and repeatedly stated that the 2007–2008 winter season would be a transition winter. As an action common to all alternatives in the Draft and Final EIS, the NPS stated the Parks would be open during the 2007–2008 winter season and operate under rules substantially the same as those that have been in effect last three winters under the temporary plan. Through this rule, the NPS intends to fulfill that commitment.

(3) Many persons planning to visit the Parks have already made travel plans in anticipation of the Parks being open for snowmobile and snowcoach use, such as reserving time off from work, booking airfares and hotel accommodations, making reservations for snowmobile or snowcoach tours, and the like. For example, in late August, Xanterra Parks and Resorts (which operates lodging and other services in Yellowstone) reported that 2007–2008 winter bookings were up 18% over last year. The Christmas-New Year period is the most heavily visited time of the 82-day winter season. If the Parks do not open as scheduled on December 19, it would create unnecessary hardship for visitors who have already planned trips, and would likely result in economic losses for some visitors if reservations had to be cancelled. Significant revenue loss for businesses in and around the Parks would also occur. Many businesses in the gateway communities surrounding the Parks, and the people who rely upon them for their livelihoods, are highly dependent upon the Parks being open for the entire duration of the 82-day season.

(4) Snowmobile and snowcoach operators have made business decisions and investments for the winter season premised on an opening date of December 19, 2007. Such actions include purchasing new snowmobiles and snowcoaches for their fleets, making offers of employment, preparing advertising and other materials, and purchasing snowmobile accessories such as suits, helmets, boots, mittens, etc. A delay in the effective date of this regulation would shorten an already brief winter season, thereby depriving these businesses and others that depend on the winter season (such as hotels, restaurants, service stations, and other hospitality-oriented businesses) of revenue that is important to their livelihoods. As recently as November 2, NPS met with snowcoach and snowmobile guides and outfitters to plan for the 2007–2008 winter season based on an opening date of December 19, 2007.

(5) There would be no benefit to the public in delaying the effective date of this rule, given that there has already been substantial notice of the opening date and that the Parks will be open under conditions substantially similar to those in effect for the past three years. The above-described harms to the public resulting from a procedural delay of this rule should therefore be avoided, and an effective date of December 19, 2007, is warranted.

Drafting Information: The primary authors of this regulation are Gary Pollock, Management Assistant, Grand Teton National Park; John Sacklin, Management Assistant, Mike Yochim, Outdoor Recreation Planner, Denice Swanke, Outdoor Recreation Planner, Yellowstone National Park; Jason Waanders, Office of the Solicitor, and Jerry Case, Regulations Program

Manager, National Park Service, Washington, DC.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

■ For the reasons given in the preamble, 36 CFR part 7 is amended as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Amend § 7.13 to revise paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(17) do not apply to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (l)(2) also apply to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(i) *Commercial guide* means a guide who operates as a snowmobile or snowcoach guide for a fee or compensation and is authorized to operate in the park under a concession contract. In this section, ''guide'' also means ''commercial guide.''

(ii) *Historic snowcoach* means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

(iii) *Oversnow route* means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate oversnow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

(iv) *Oversnow vehicle* means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach must comply with all requirements applicable to snowmobiles.

(v) *Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

(vi) *Snowmobile* means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

(vii) *Snowplane* means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and must provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Yellowstone National Park?* (i) Beginning with the 2008–2009 winter season snowcoaches may only be operated in Yellowstone National Park under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) Beginning in the 2011–2012 season, all snowcoaches (historic and non-historic) must meet NPS air emission requirements, which functionally means that they must have the same EPA Tier I emissions control equipment incorporated into the engine and drive train as would the equivalent class (size and weight) of wheeled vehicle. Through the winter of 2010–2011, all non-historic snowcoaches must meet NPS air emissions requirements, which are the applicable EPA emission standards for the vehicle at the time it was manufactured.

(iii) All critical emission-related exhaust components (as listed in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emissions-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used if they do not worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Beginning in the 2011–2012 season, all snowcoaches must meet a sound emissions requirement of no greater than 73 dBA. The Superintendent will establish the procedures for determining compliance.

(vi) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR Part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have been shown to the Superintendent to have emissions no greater than the limits specified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent

procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(v) These air and sound emissions requirements do not apply to snowmobiles being operated on the Cave Falls Road in Yellowstone.

(7) *Where may I operate my snowmobile in Yellowstone National Park?* (i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) The Grand Loop Road from its junction with Upper Terrace Drive to Norris Junction.

(B) Norris Junction to Canyon Junction.

(C) The Grand Loop Road from Norris Junction to Madison Junction.

(D) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(E) The Grand Loop Road from Madison Junction to West Thumb.

(F) The South Entrance Road from the South Entrance to West Thumb.

(G) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(H) The East Entrance Road from Fishing Bridge Junction to the East Entrance.

(I) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(J) The South Canyon Rim Drive.

(K) Lake Butte Road.

(L) In the developed areas of Madison Junction, Old Faithful, Grant Village, West Thumb, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(M) Firehole Canyon Drive, between noon and 9 p.m. each day.

(N) North Canyon Rim Drive, between noon and 9 p.m. each day.

(O) Riverside Drive, between noon and 9 p.m. each day.

(P) Cave Falls Road.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(i)(M) through (1)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes:

(A) Fountain Flat Road.

(B) The Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(C) For rubber-tracked snowcoaches only, the Grand Loop Road from Upper Terrace Drive to the junction of the Grand Loop Road and North Entrance Road, and within the Mammoth Hot Springs developed area.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one of more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(iv) The guiding requirements described in this paragraph (l)(9) do not apply to snowmobiles being operated on the Cave Falls Road.

(10) *Are there limits established for the number of snowmobiles and snowcoaches permitted to operate in the park each day?* The number of snowmobiles and snowcoaches allowed to operate in the park each day is limited to a certain number per entrance or location. The limits are listed in the following table:

TABLE.—DAILY SNOWMOBILE AND SNOWCOACH LIMITS*

Park entrance/location**	Commercially guided snowmobiles	Commercially guided snowcoaches
(i) North Entrance	***20	15
(ii) West Entrance	300	37
(iii) South Entrance	170	10
(iv) East Entrance	30	2
(v) Old Faithful	***20	19
(vi) Cave Falls	****50	0

* The numbers of snowmobiles and snowcoaches allocated to a particular entrance may be adjusted depending on the results of analysis for concessions contracts, not to exceed a parkwide daily total of 540 snowmobiles and 83 snowcoaches. The snowcoaches allocated to Old Faithful are parkwide.

** For the winter of 2007–2008 only, the following snowmobile allocations are in effect: West Entrance, 400; South Entrance, 220; East Entrance, 40; North Entrance, 30; and Old Faithful, 30. The following snowcoach allocations will apply in 2007–2008 only: West Entrance, 34; South Entrance, 10; East Entrance, 3; North Entrance, 13; and Old Faithful, 18.

*** Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessionaire is the sole provider at both of these areas, this regulation allows the daily entry limits between the North Entrance and Old Faithful to be adjusted as necessary, so long as the total number of snowmobiles between the two entrances does not exceed 40. For example, the concessionaire could operate 20 snowmobiles at Old Faithful and 20 at the North Entrance if visitor demand warranted it. This will allow the concessionaire to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone.

**** These snowmobiles operate on an approximately 1-mile segment of road within the park where the use is incidental to other snowmobiling activities in the Targhee National Forest. These snowmobiles do not need to be guided or meet NPS air and sound emissions requirements.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle for more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from a state or province in the United States or Canada, respectively.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (l)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (l)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is subject to §§ 2.18(a) and (c), but not subject to §§ 2.18(b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (l)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

(iii) Dog sledding and ski-joring are prohibited. Bicycles are not allowed on oversnow routes in Yellowstone.

(16) *May I operate a snowplane in Yellowstone National Park?* The operation of a snowplane in Yellowstone is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited. Each such occurrence of non-compliance with these regulations is a separate violation.

■ 3. Revise § 7.21 to read as follows:

§ 7.21 John D. Rockefeller, Jr. Memorial Parkway.

(a)(1) *What is the scope of this section?* The regulations contained in paragraphs (a)(2) through (a)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(17) do not apply to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All of the terms in § 7.13(l)(2) of this part apply to this section. This paragraph also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and will provide notice of those conditions in accordance with

§ 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in the Parkway?* (i) Snowcoaches may be only operated in the Parkway under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) Beginning in the 2011–2012 season, all snowcoaches (historic and non-historic) must meet NPS air emission requirements, which functionally means that they must have the same EPA Tier I emissions control equipment incorporated into the engine and drive train as would the equivalent class (size and weight) of wheeled vehicle. Through the winter of 2010–2011, all non-historic snowcoaches must meet NPS air emissions requirements, which are the applicable EPA emission standards for the vehicle at the time it was manufactured.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emission-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used if they do not worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Beginning in the 2011–2012 season, all snowcoaches must meet a sound emissions requirement of no greater than 73 dBA. The Superintendent will establish the procedures for determining compliance.

(vi) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the Parkway. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR Part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have been shown to have air emissions no greater than the restrictions identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the Parkway for a period not exceeding 6 years from the date upon which first certified.

(iv) Beginning with the winter season of 2008–2009, these air and sound emissions restrictions do not apply to snowmobiles being operated on the Grassy Lake Road. For the winter season of 2007–2008 only, these air and sound emissions restrictions do not apply to snowmobiles originating in the Targhee National Forest and traveling on the Grassy Lake Road to Flagg Ranch. On all other oversnow routes within the Parkway, snowmobiles must meet these air and sound emissions requirements.

(v) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where may I operate my snowmobile in the Parkway?* (i) You may operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/191/287 from the southern boundary of the Parkway north to the Snake River Bridge through the winter season of 2007–2008 only.

(B) Along U.S. Highway 89/191/287 from Flagg Ranch to the northern boundary of the Parkway. Through the winter of 2007–2008 only, this route also includes the segment from the Snake River Bridge to Flagg Ranch.

(C) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(D) Flagg Ranch developed area.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(6) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraph (a)(7)(i)(B) and (D) of this section. No other routes are open to snowcoach use, except as provided in (ii).

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in the Parkway, and what other guiding requirements apply?* (i) All recreational snowmobile operators using the oversnow route along U.S. Highway 89/191/287 from Flagg Ranch to the northern boundary of the Parkway must be accompanied by a commercial guide. A guide is not required in other portions of the Parkway.

(ii) Guided snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided snowmobile parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(10) *Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the Parkway each day?* The number of snowmobiles and snowcoaches allowed to operate in the Parkway each day is limited to a certain number per road segment. The limits are listed in the following table:

TABLE.—DAILY SNOWMOBILE AND SNOWCOACH ENTRY LIMITS

Park entrance/road segment	Snowmobiles	Commercial snowcoaches
(i) CDST *	0	0
(ii) Grassy Lake Road (Flagg-Ashton Road) **	25	0
(iii) Flagg Ranch to Yellowstone South Entrance ***	170	10

* The Continental Divide Snowmobile Trail lies within both Grand Teton and the Parkway. For the winter of 2007–2008 only, a daily entry limit of 50 snowmobiles applies to total use on this route in both parks.

** For the winter season of 2007–2008 only, the daily entry limit for this route is 50 snowmobiles per day.

*** Commercially guided; during the winter of 2007–2008 only, the daily entrance limit is 220 snowmobiles and 10 snowcoaches. The numbers of snowmobiles and snowcoaches allocated to the Flagg Ranch to Yellowstone South Entrance road segment may be adjusted depending on the results of analysis for concessions contracts.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) Towing persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (a)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (a)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in the Parkway is subject to §§ 2.18(a), (b), and (c), but not to §§ 2.18(d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (a)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

(16) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions, or requirements of paragraphs (a)(1) through (a)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

(b) [Reserved]

■ 4. Amend § 7.22, to revise paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What is the scope of this section?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph (g)(2) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with use limits, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Grand Teton National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the Superintendent.

(5) *Must I operate a certain model of snowmobile in the park?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in Grand Teton National Park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR Part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified, except that snowmobiles being operated on Jackson Lake may continue to be operated up to 10 years, provided that these snowmobiles' mileage does not exceed 6,000 miles.

(iv) Snowmobiles will be exempt from these air and sound emissions requirements while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(v) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where may I operate my snowmobile in the park?* (i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must be licensed or otherwise permitted to fish in Wyoming and possess the proper fishing gear. Snowmobiles may only be used to travel to and from fishing locations on the lake.

(B) The Continental Divide Snowmobile Trail (CDST) from the Moran Entrance Station to the north boundary of the park for the winter season of 2007–2008 only.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel, and may establish separate zones for motorized and non-motorized uses on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (g)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Must I travel with a commercial guide while snowmobiling in Grand Teton National Park?* You are not required to use a guide while snowmobiling in Grand Teton National Park.

(9) *Are there limits established for the number of snowmobiles permitted to operate in the park each day?* The number of snowmobiles allowed to operate in the park each day is limited to a certain number per road segment or location. The snowmobile limits are listed in the following table:

TABLE.—DAILY SNOWMOBILE LIMITS

Road segment/location	Total number of snowmobiles
(i) GTNP and the Parkway—Total Use on CDST *	0
(ii) Jackson Lake	40

* The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. For the winter season of 2007–2008 only, a daily limit of 50 snowmobiles will be in effect. The limits established here do not apply to the portion of the CDST described in paragraph (g)(16)(iii) of this section.

(10) *When may I operate my snowmobile?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours or dates will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (g)(11) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach operator and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (g)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is subject to §§ 2.18(a), (b), and (c), but not subject to § 2.18(d) and (e) and § 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(15) *May I operate a snowplane in the park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on the designated routes through the park identified in (i)–(iv) below. Requirements established in this section related to air and sound emissions, daily entry limits, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. Only the following routes are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from the east park boundary to a point approximately 2 miles east of Moran Junction. If necessary for the proper administration of visitor use and resource protection, the Superintendent may extend this designated route to the Moran Entrance Station.

(iv) The Superintendent may designate additional routes if necessary to provide access to other adjacent public lands.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may only use those routes designated in paragraph (g)(16) of this section to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* The Superintendent may establish reasonable and direct snowmobile access routes to the inholding or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to private properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89/191 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the ''Clark Property.''

(iii) From the Moose-Wilson Road to the land commonly referred to as the ''Barker Property.''

(iv) From the Moose-Wilson Road to the property commonly referred to as the ''Halpin Property.''

(v) From Highway 26/89/191 to those lands commonly referred to as the ''Meadows'', the ''Circle EW Ranch'', the ''Moulton Property'', the ''Levinson Property'' and the ''West Property.''

(vi) From Cunningham Cabin pullout on U.S. 26/89/191 near Triangle X to the piece of land commonly referred to as the ''Lost Creek Ranch.''

(vii) The Superintendent may designate additional routes if necessary

to provide reasonable access to inholdings or adjacent private property.

(viii) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* The routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(1) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

Dated: December 10, 2007.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–24175 Filed 12–12–07; 8:45 am]

BILLING CODE 4312–CT–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–IL–0002; FRL–8503–5]

Approval and Promulgation of Implementation Plans; Illinois; Source-Specific Revision for Cromwell-Phoenix, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Illinois State Implementation Plan (SIP) to incorporate site-specific Volatile Organic Compounds (VOC) regulations for the Corrosion Inhibiting (CI) packaging production facility of Cromwell-Phoenix, Incorporated (Cromwell-Phoenix) located in Alsip, Illinois (Cook County). The EPA is approving an adjusted standard from Illinois' paper coating regulations for Cromwell-Phoenix's CI packaging production facility.

DATES: This ''direct final'' rule is effective on February 11, 2008, unless EPA receives adverse written comments by January 14, 2008. If an adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2004–IL–0002, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2004–IL–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 hardcopy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6057. E-mail address: *doty.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' are used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is organized as follows:

I. General Information
  Does this action apply to me?
II. Today's Action
  A. What action is EPA taking today?
  B. Why is EPA taking this action?
  C. What are the alternative control requirements included in the Adjusted Standard?
  D. What information did Illinois submit in support of this SIP revision?
  E. Was a public hearing held?
  F. Why is this SIP revision being approved?
III. Final Rulemaking Action
IV. Statutory and Executive Order Reviews

I. General Information

Does this action apply to me?

This action only applies to Cromwell-Phoenix, Incorporated (Cromwell-Phoenix), and, in particular, to Cromwell-Phoenix's CI packaging production facility located in Alsip, Illinois (Cook County). If you are the owner or operator of this source, this action affects the air pollution control rules that apply to your source as contained in the Illinois SIP.

II. Today's Action

A. What action is EPA taking today?

In this action, EPA is approving a site-specific revision to the Illinois SIP for Cromwell-Phoenix's CI packaging production facility located in Alsip, Illinois (Cook County). Specifically, EPA is approving a site-specific adjusted standard from volume 35 of the Illinois Administrative Code subpart F section 218.204(c) (35 IAC 218.204(c)) for Cromwell-Phoenix's CI packaging production facility. Pursuant to this adjusted standard, the applicable paper coating Volatile Organic Materials (VOM) [1] content limits and other associated requirements of 35 IAC 218.204(c) do not apply to the CI packaging production facility. The adjusted standard contains a revised, source-specific coating VOM content limit along with other requirements specific to this facility. The Illinois Pollution Control Board (IPCB) adopted the alternative requirements for this source facility on September 18, 2003. We are approving these alternative requirements as part of the Adjusted Standard for incorporation into Illinois' SIP.

B. Why is EPA taking this action?

The use of paper impregnating solutions including organic solvents that do not meet Illinois' paper coating VOC content limits is necessary for CI packaging materials (designed to protect customer-wrapped metal parts) produced at the subject source facility. The VOC used in the CI solutions are designed to carry and distribute CI compounds into the impregnated paper and are, themselves, CI compounds. Given that the VOC carriers are also CI compounds, they have low vapor pressures and are selected such that they are generally retained in the finished CI paper products. The VOC are an integral component of the CI solutions, providing part of the CI function of the finished product and help carry CI compounds to the surfaces of metal parts wrapped in the CI papers. The low VOC volatility results in low VOC emissions at the facility. Cromwell-Phoenix has estimated that the maximum VOC emissions from the paper coating operations is 5 to 6 tons per year in total for the facility.

Cromwell-Phoenix has investigated the use of alternative, water-based CI solutions that have VOC contents complying with the VOC content limit of 35 IAC 218.204(c). Two problems were noted for the use of such CI solutions. First, the use of such CI solutions have resulted in unacceptable CI packaging materials. The water-based CI solutions caused the paper substrates to swell and to unacceptably deform or crease, resulting in products not usable by customers or unacceptable in appearance to customers. Second, the use of water in the CI solutions forced the need for extra drying of the CI product, which actually resulted in an increase in VOC emissions per unit of product produced as the drying process drove off VOC along with the water. Therefore, based on these two conclusions, Cromwell-Phoenix concluded that the use of water-based CI solutions would not be acceptable.

Consideration of add-on VOC emission control alternatives by Cromwell-Phoenix and the State has led to the conclusion that feasible, cost-effective add-on emission controls are not available for this facility. Cromwell-Phoenix considered the use of add-on emission control devices, which were determined to have an annual VOC control-cost effectiveness ratio ranging from $25,000 to $50,000 per ton of VOC controlled. Cromwell-Phoenix points out that this cost-effectiveness is excessive, especially considering that annual VOC emissions from the controlled units would only be 5 to 6 tons. Therefore, this facility cannot meet alternative VOC control requirements, as contained in 35 IAC 218.207(b) [2] in a cost-effective manner.

In summary, acceptable CI solvents that would allow compliance with the requirements of 35 IAC 218.204(c) are unavailable for Cromwell-Phoenix's CI packaging production facility and add-on VOC emission controls are not feasible in a cost-effective manner. Recognizing that significantly reducing the VOC content of CI solutions or that significantly further controlling VOC emissions at this facility cannot be done in a cost-effective manner, we agree that this facility qualifies for site-specific adjusted standard as adopted by the IPCB.

C. What are the alternative control requirements included in the Adjusted Standard?

In an order adopted and signed on September 18, 2003, the IPCB granted Cromwell-Phoenix an adjusted standard from 35 IAC 218.204(c), effective the same day. This adjusted standard applies to the equipment and emissions at Cromwell-Phoenix's facility located at 12701 South Ridgeway, Alsip, Cook County, Illinois existing as of July 14, 2003, as identified in the Clean Air Act Permit Program permit application Cromwell filed on March 20, 2003.

Under the adopted IPCB order, rather than the paper coating VOC content limit of 35 IAC 218.204(c), the subject Cromwell-Phoenix source is subject to the following requirements:

(1) The total actual VOC emissions from the entire Cromwell-Phoenix Alsip facility may not exceed 25 tons per year;

(2) The Versil Pak wax laminating coatings must continue to meet the VOC content limitations under 35 IAC 218 Subpart F;

(3) The web-fed and sheet-fed CI coating and printing lines must use only CI solutions which, as applied, have VOC content limits that do not exceed 8.3 pounds per gallon, less water;

(4) Cromwell-Phoenix must operate in full compliance with all other applicable provisions of 35 IAC 218;

(5) Cromwell-Phoenix must continue to investigate CI coatings with reduced VOC contents. Where practicable, Cromwell-Phoenix must substitute lower VOC coatings for current coatings as long as such substitution does not result in a net increase in VOC emissions from the facility. Beginning on October 1, 2004, Cromwell-Phoenix must prepare and submit an annual report summarizing the activities and results of its efforts to find suitable lower VOC coatings. This annual report must be submitted to the IEPA;

(6) Cromwell-Phoenix must operate in full compliance with the Clean Air Act, Illinois Environmental Protection Act, and any other applicable regulations; and

(7) Cromwell-Phoenix must continue to report annual emissions to the IEPA in accordance with the requirements of 35 IAC 254.

D. What information did Illinois submit in support of this SIP revision?

In its October 31, 2003, SIP revision request, the Illinois EPA submitted the following information and supporting documentation (along with other less substantive procedural documents, which are also included in the record for this rulemaking) in support of its

[1] Illinois' VOC emission control rules define control requirements in terms of Volatile Organic Materials (VOM). Illinois' definition of VOM is equivalent to EPA's definition of VOC. Therefore, the two terms/acronyms may be used interchangeably.

[2] This rule allows the optional use of an add-on emissions control system in lieu of meeting a specific coating VOC content limit provided that the coating line is equipped with an emission capture system and control device that provides 81 percent reduction in the overall emissions of VOC from the coating line and that the emissions control device has a minimum efficiency of 90 percent or that the add-on emissions control system is demonstrated to have an overall efficiency sufficient to limit VOC emissions to no more than what is allowed under 35 IAC 218.204.

request for EPA's approval of the adjusted standard for Cromwell-Phoenix:

(1) Cromwell-Phoenix's petition for a site-specific adjusted standard from 35 IAC 218.204(c) filed with the IPCB on May 29, 2003. This document describes the nature of the VOC source for which Cromwell-Phoenix seeks an adjusted standard and documents why Cromwell-Phoenix cannot comply with the requirements of 35 IAC 218;

(2) A notice of public hearing issued by the IPCB on July 3, 2003, noting that the public hearing would be held on August 7, 2003, in Chicago;

(3) A motion for expedited review filed the IPCB on July 3, 2003. Cromwell-Phoenix notified the IPCB that it was in business negotiations with another company that prompted the need for Cromwell-Phoenix to request that the IPCB process a source permit with the adjusted standard by December 31, 2003. Cromwell-Phoenix noted that, although it expected its CI production to increase at the Alsip facility, the VOC emissions at the facility would stay below the major source threshold, below 25 tons per year;

(4) A transcript of the August 7, 2003, public hearing on the amended standard. This transcript shows that no testimony was presented supporting a disapproval of the adjusted standard by the IPCB. The testimony given by the Illinois EPA does support its conclusion that the evaporation of VOC from the CI packaging material after the impregnation of the paper substrate is very low, even over a possible shelf life of up to five years. The Illinois EPA agrees that Cromwell-Phoenix has economic and product performance incentives to ensure that VOC components are retained in the CI product and not emitted at the Alsip facility. The Illinois EPA agrees that substitution of water for VOC in the CI solutions does not lead to viable CI products and can lead to increased VOC emissions as the result of the need for additional warm air drying of the product prior to distribution to customers. Finally, the Illinois EPA agrees that the only viable add-on emission control systems for the Alsip CI production facility, thermal oxidation or combination carbon adsorption/thermal oxidation systems, would have cost-effectiveness ratios that are well above the level that would be considered to be reasonable for conventional RACT controls. The costs of the viable add-on emission control systems would be prohibitive for Cromwell-Phoenix. The Illinois EPA concludes that the adjusted standard for Cromwell-Phoenix; and,

(5) The September 18, 2003, Opinion and Order of the IPCB, in which it adopted the amendments to the paper coating rules in 35 IAC 218.204(c) for Cromwell-Phoenix's Alsip CI packaging production facility, subject to conditions and alternate requirements for this facility.

Our review of the materials included in the Illinois EPA October 31, 2003, submittal leads us to agree with the Illinois EPA that the adjusted standard for Cromwell-Phoenix is warranted.

E. Was a public hearing held?

As noted above, the State held a public hearing on August 7, 2003, in Chicago. No parties other than those representing the State and those representing Cromwell-Phoenix attended the public hearing. No comments opposing the source-specific rule revision were submitted by the public during the public review period.

F. Why is this SIP revision being approved?

We agree with the State that Cromwell-Phoenix cannot produce a viable CI product using paper coating solutions that meet the VOC content requirements of 35 IAC 218.204(c). In addition, the use of add-on VOC emission controls for the subject source facility cannot be accomplished in a cost-effective manner meeting one of the general tenets of RACT that such emission controls be ''reasonably'' available. Therefore, an adjusted standard is warranted for this facility.

III. Final Rulemaking Action

For the reasons given above, EPA is approving into the Illinois SIP an Adjusted Standard for Cromwell-Phoenix from 35 IAC 218.204(c) for its CI packaging production facility in Alsip, Illinois. This Adjusted Standard (Opinion and Order of the Board, AS 03–5) was adopted by the IPCB on September 18, 2003.

The EPA is publishing this action without prior proposal because we view this as a non-controversial amendment, and anticipate no adverse comments. In the proposed rules section of this **Federal Register** publication, however, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse comments are filed. This rule will be effective February 11, 2008 without further notice unless we receive relevant adverse written comments by January 14, 2008. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any relevant adverse comments, this action will be effective on February 11, 2008.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

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 a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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 approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the 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.

Paperwork Reduction Act

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.*).

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).

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 February 11, 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, Volatile organic compounds, Ozone, Reporting and recordkeeping requirements.

Dated: November 27, 2007.

Mary A. Gade,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, 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 O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(179) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(179) On October 31, 2003, the Illinois Environmental Protection Agency submitted rules and related materials to address site-specific requirements for Cromwell-Phoenix, Incorporated, located in Alsip, Illinois. These rules establish an adjusted standard for the corrosion inhibiting packaging production facility of Cromwell-Phoenix, Incorporated located at this source site. These rules provide a site-specific adjusted standard for this source facility for volume 35 of the Illinois Administrative Code subpart F section 218.204(c). The adjusted standard gives the corrosion inhibiting paper coating lines at the Alsip facility an adjusted volatile organic material (volatile organic compounds) content limit for paper coatings, and places an annual limit on the volatile organic material emissions from the Alsip facility as a whole. The adjusted standard also establishes source administration and reporting requirements for Cromwell-Phoenix, Incorporated Alsip facility. EPA is approving this site-specific adjusted standard as a revision of the Illinois state implementation plan.

(i) Incorporation by reference.

(A) September 18, 2003, Opinion and Order of the Illinois Pollution Control Board, AS 03–5, effective September 18, 2003.

[FR Doc. E7–23982 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–364; FCC 07–194]

Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Currently, Globalstar, Inc. (Globalstar) and Iridium Satellite LLC (Iridium) are the two operational providers of Mobile-Satellite Service (MSS) in the 1610–1626.5 MHz band (Big LEO L-band). By this decision, the Federal Communications Commission (Commission) revises the spectrum sharing plan between the two systems. Specifically, the Commission assigns Globalstar exclusive access to the 1610–1617.775 MHz segment of the L-band, assigns Iridium exclusive access to the 1618.725–1626.5 MHz segment, and assigns for sharing between the two MSS providers a small segment of the L-band, at 1617.775–1618.725 MHz.

DATES: Effective: January 14, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Howard Griboff, 202/418–0657.

SUPPLEMENTARY INFORMATION: The 1610–1626.5 MHz band (Big LEO L-band) and

2483.5–2500 MHz band (Big LEO S-band) was allocated to the Mobile-Satellite Service (MSS) for low-earth orbiting satellites (Big LEOs) in 1994. The Commission assigned the 1610–1621.35 MHz segment in the Earth-to-space (uplink) direction for up to four code division multiple access (CDMA) MSS systems, paired with the 2483.5–2500 MHz band for the four CDMA MSS systems in the space-to-Earth (downlink) direction. The Commission designated the 1621.35–1626.5 MHz segment for a single time division multiple access (TDMA) system (uplink and downlink). Since 1994, only one CDMA system, operated by Globalstar, Inc. (Globalstar), and one TDMA system, operated by Iridium Satellite LLC (Iridium), have launched and operated. In the antecedent *Big LEO Spectrum Sharing Order,* the Commission reassigned the 1618.25–1621.35 MHz segment of the band, formerly used for MSS solely by Globalstar, for sharing between the two systems. *See* Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; Allocation of Spectrum Below 3 GHz for Mobile and Fixed Services To Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems (*Big LEO Spectrum Sharing Order*), 69 FR 48157, Aug. 9, 2004. The Commission also sought comment on sharing an additional 2.25 megahertz of spectrum, at 1616–1618.25 MHz, between the two systems. *See* Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands (*Big LEO Spectrum Sharing Further Notice*), 69 FR 48192, Aug. 9, 2004.

Based on the record generated in this proceeding, the Commission revises its prior decision to assign the 1618.25–1621.35 MHz segment for sharing between the two systems. Instead, the Commission reassigns the 1618.725–1621.35 MHz segment to TDMA systems (Iridium) for exclusive use, and requires sharing in a small portion of the L-band, at 1617.775–1618.725 MHz, in order to accommodate the realities of Globalstar's CDMA channel plan. As a result of this action, Globalstar will have exclusive MSS use of 7.775 megahertz of spectrum in the L-band at 1610–1617.775 MHz, Iridium will have exclusive use of 7.775 megahertz of spectrum at 1618.725–1626.5 MHz, and the two MSS operators will share 0.95 megahertz of spectrum at 1617.775–1618.725 MHz. As a result of this decision, the *Big LEO Spectrum Sharing Further Notice* has become moot. The Commission delegates authority to its International Bureau to modify the MSS licenses of Iridium and Globalstar in accordance with this decision, pursuant to Section 316 of the Communications Act of 1934, as amended, 47 U.S.C. 316.

This Second Order on Reconsideration and Second Report and Order does not contain new or modified information collection requirements 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).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–24104 Filed 12–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–115, WC Docket No. 04–36; FCC 07–22]

Customer Proprietary Network Information

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted rules to implement section 222 of the Communications Act of 1934, as amended, which governs carriers' use and disclosure of customer proprietary network information. The rules in §§ 64.2003, 64.2005, 64.2007, 64.2009, 64.2010, and 64.2011 required Office of Management and Budget approval and the Commission stated previously in its **Federal Register** publication that it would announce the effective date of these rules when approved. This document announces the effective date of these rules.

DATES: The revisions and amendments to 47 CFR 64.2003, 64.2005, 64.2007, and 64.2009, and the addition of 47 CFR 64.2010 and 64.2011, published at 72 FR 31948, June 8, 2007, became effective on December 8, 2007.

FOR FURTHER INFORMATION CONTACT: Melissa Droller Kirkel, (202) 418–7958, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register**, 72 FR 31948, June 8, 2007, that sets forth an effective date of June 8, 2007, except for the revisions and amendments to §§ 64.2003, 64.2005, 64.2007, and 64.2009, and the addition of §§ 64.2010 and 64.2011, which contained information collection requirements that had not been approved by the Office of Management and Budget (OMB). The document stated that the Commission will publish a document in the **Federal Register** announcing the effective date of these rules. On December 6, 2007, OMB approved the information collection requirements contained in these sections pursuant to OMB Control No. 3060–0715. Accordingly, the information collection requirements contained in these rules became effective on December 8, 2007. The expiration date for the information collection is June 30, 2008.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–24105 Filed 12–12–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket ID PHMSA–2003–15852]

RIN 2137–AE17

Pipeline Safety: Applicability of Public Awareness Regulations to Certain Gas Distribution Operators

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule relaxes regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems. These operators typically manage property and incidentally provide gas service to customers located on the property. The change provides a less burdensome means for these operators to satisfy public awareness needs.

DATES: This final rule takes effect January 14, 2008.

FOR FURTHER INFORMATION CONTACT: For information about this rulemaking contact Barbara Betsock by phone at (202) 366–4361, or by e-mail at

barbara.betsock@dot.gov. For information about public awareness programs, contact Blaine Keener by phone at (202) 366–0970 or e-mail at *blaine.keener@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

PHMSA reopened this rulemaking in response to a petition for reconsideration filed by the American Public Gas Association (APGA). The APGA proposed that we exempt operators of master meter systems from the agency's new public awareness regulations (70 FR 28833; May 19, 2005), which require all pipeline operators to develop written public awareness programs following American Petroleum Institute Recommended Practice 1162 (API RP 1162). The specific regulations in issue (codified at 49 CFR 192.616) require all pipeline operators to provide pipeline safety awareness materials to the affected public, emergency officials, local public officials, and excavators. The APGA petition asked that PHMSA amend these requirements on the ground that messages from operators of master meter systems to the public and emergency officials could differ from messages being sent by large gas distribution operators and cause confusion among these pipeline safety stakeholders. As an alternative, the APGA proposed that operators of master meter systems be required to pass along to their customers the awareness materials provided by the gas distribution operator serving the master meter.

PHMSA has decided to relax the public awareness requirements for operators of master meter systems, but we are not adopting the specific amendment proposed by the APGA. Customers on the master meter system may already receive pipeline safety information directly from pipeline operators near their residence. However, only the operator of the master meter system can provide the critical information needed by these customers to report a potential gas emergency on the master meter system.

During the review of the APGA petition, PHMSA determined that operators of petroleum gas distribution systems whose primary business is not transportation should be treated the same as operators of a master meter distribution system with respect to public awareness requirements. Both of these operator types typically operate gas distribution systems within a well-defined area as a secondary business. The potential confusion among stakeholders which the APGA predicts for messages sent by operators of master meter systems applies to the messages sent by operators of small petroleum gas distribution systems. In a written response to the APGA and through public workshops and an advisory bulletin (71 FR 34998; June 16, 2006), PHMSA indicated its intention to relieve operators of master meter and petroleum gas distribution systems of some of the requirements for public awareness programs. On September 29, 2006, PHMSA published a notice of proposed rulemaking (NPRM) to accomplish this (71 FR 57457; Sept. 29, 2006).

Comments on the NPRM and Advisory Committee Consideration

PHMSA received five sets of comments on the NPRM. The APGA supports the NPRM as responsive to its petition, and all commenters support relaxing the regulations for the operators of master meter and petroleum gas distribution systems.

The Manufactured Housing Institute urges PHMSA to grant complete relief from public awareness requirements to master meter operators. PHMSA is not considering doing so because of the safety benefit of public awareness. In addition, 49 U.S.C. 60116 requires all operators to have public awareness programs.

The APGA asks that PHMSA additionally require master meter operators to pass on to their customers the educational materials received from supplying gas companies. PHMSA is not requiring this because the customers of master meter operators will already receive materials from operators with pipelines near the customers.

The National Propane Gas Association and the Maine Oil Dealer Association ask for a clarification with respect to petroleum gas marketers. The associations ask PHMSA to allow marketers whose business involves transportation of gas by truck and pipeline to qualify for the relaxed requirements proposed in the NPRM if only a small portion of that transportation is by pipeline. The relaxed requirement criteria are taken from existing regulations at 49 CFR 192.614(e). Operators who currently ''qualify'' for the exemption in § 192.614(e) will also ''qualify'' for the relaxed public awareness requirements. It is unnecessary to add, as suggested by the commenters, the qualifier ''by pipeline'' to the term ''transportation of gas'' since that term is defined in § 192.3 to be limited to pipeline transportation.

The members of the Technical Pipeline Safety Standards Committee, voting by letter ballot, voted unanimously to support the NPRM as technically feasible, reasonable, cost-effective and practicable. The letter ballots have been placed in the docket for advisory committee materials (Docket ID PHMSA–RSPA–1998–4470).

Compliance Dates

The regulations currently require development and implementation of public awareness programs meeting API RP 1162. This final rule provides less onerous requirements for master meter and petroleum gas operators (for whom gas transportation is not a primary business activity) regardless of size. PHMSA does not anticipate that these operators will have difficulty complying with these relaxed requirements. However, because gas distribution is not their primary business, it may take more time for these operators to learn of their responsibilities for new gas pipeline safety regulations. Therefore, we are including a compliance date six months from issuance of this final rule.

Regulatory Analyses and Notices

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Executive Order 12866 and DOT Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This final rule will affect about 20,000 operators of master meters and petroleum gas systems. Although we do not have quantitative data, we believe most of these operators are small entities. This final rule will relieve regulatory burden for most of these operators. Based on the above information, I hereby certify under section 605 of the Regulatory Flexibility Act that this regulation rule will not have a significant impact on a substantial number of small entities.

Executive Order 13175

PHMSA has analyzed this rulemaking according to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this final rule will not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rulemaking.

National Environmental Policy Act

PHMSA has analyzed this final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined this final rule is unlikely to affect the quality of the human environment significantly. An environmental assessment document is available for review in the docket.

Executive Order 13132

PHMSA has analyzed the rulemaking according to Executive Order 13132 (''Federalism''). This final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not impose substantial direct compliance costs on State and local governments. This final regulation would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

Transporting gas impacts the nation's available energy supply. However, this final rule is not a ''significant energy action'' under Executive Order 13211. It also 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. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this final rule as a significant energy action.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

■ For the reasons provided in the preamble, PHMSA amends 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

■ 2. Amend § 192.616 as follows:

■ a. Revise paragraph (a);

■ b. Revise the second sentence of paragraph (h); and

■ c. Add paragraph (j).

The revisions and additions read as follows:

§ 192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 192.7).

* * * * *

(h) * * * The operator of a master meter or petroleum gas system covered under paragraph (j) of this section must complete development of its written procedure by June 13, 2008. * * *

* * * * *

(j) Unless the operator transports gas as a primary activity, the operator of a master meter or petroleum gas system is not required to develop a public awareness program as prescribed in paragraphs (a) through (g) of this section. Instead the operator must develop and implement a written procedure to provide its customers public awareness messages twice annually. If the master meter or petroleum gas system is located on property the operator does not control, the operator must provide similar messages twice annually to persons controlling the property. The public awareness message must include:

(1) A description of the purpose and reliability of the pipeline;

(2) An overview of the hazards of the pipeline and prevention measures used;

(3) Information about damage prevention;

(4) How to recognize and respond to a leak; and

(5) How to get additional information.

Issued in Washington, DC, on December 6, 2007.

Krista L. Edwards,

Acting Administrator.

[FR Doc. E7–24124 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register

Vol. 72, No. 239

Thursday, December 13, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. AMS–FV–06–0184; FV03–925–1 PR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Reopening and Extension of Comment Period on Changing Regulatory Periods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of comment period.

SUMMARY: Notice is hereby given that the comment period on proposed changes in the regulatory periods when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation is reopened and extended until December 28, 2007.

DATES: Comments must be received by December 28, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, e-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue and the proposed rule published in the May 25, 2005 (70 FR 30001) issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: *Jen.Garcia@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule was issued on May 20, 2005, and published in the **Federal Register** on May 25, 2005 (70 FR 30001) that would change the regulatory period when the minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under the order and to imported grapes under the table grape import regulation. A notice of extension of the comment period was issued July 20, 2005, and published in the **Federal Register** on July 25, 2005 (70 FR 42513) which extended the comment period to September 25, 2005.

The comment period was extended again in a notice issued September 23, 2005, and published in the **Federal Register** on September 27, 2005 (70 FR 56378) which extended the comment period further to November 28, 2005. The comment period was reopened and extended again in a notice issued June 30, 2006, and published in the **Federal Register** on July 11, 2006 (71 FR 39019), extending the comment period to September 11, 2006.

USDA subsequently updated the statistical information cited in the original proposed rule and reopened the comment period in a notice issued October 18, 2007 and published in the **Federal Register** on October 25, 2007 (72 FR 60588). The comment period was reopened for a thirty day period ending November 26, 2007.

Prior to the end of the most recent comment period, USDA received additional requests to further extend the comment period to consider the statistical information cited in the notice. USDA is providing a reopening and extension of the comment period to allow all interested parties sufficient time to comment.

USDA is hereby reopening and extending the comment period for 15 additional days or until December 28, 2007. This action is intended to provide interested persons more time to review the proposed rule, perform more complete analysis of statistical data, and submit written comments.

Accordingly, the period in which to file written comments is extended until December 28, 2007. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937.

Authority: 7 U.S.C. 601–674.

Dated: December 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–6049 Filed 12–10–07; 3:39 pm]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–IL–0002; FRL–8503–6]

Approval and Promulgation of Implementation Plans; Illinois; Source-Specific Revision for Cromwell-Phoenix, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) to incorporate site-specific Volatile Organic Compounds (VOC) regulations for the Corrosion Inhibiting (CI) packaging production facility of Cromwell-Phoenix, Incorporated (Cromwell-Phoenix) located in Alsip, Illinois (Cook County). The EPA is proposing to approve an adjusted standard from Illinois' paper coating regulations for Cromwell-Phoenix's CI packaging production facility.

DATES: Comments must be received on or before January 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2004–IL–0002, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: November 27, 2007.

Mary A. Gade,

Regional Administrator, Region 5.

[FR Doc. E7–23984 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2007–1150; FRL–8505–4]

Disapproval of Plan of Nevada: Clean Air Mercury Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove the State Plan submitted by Nevada on November 15, 2006. The plan is intended to address the requirements of EPA's Clean Air Mercury Rule (CAMR), promulgated on May 18, 2005 and subsequently revised on June 9, 2006. EPA is proposing to determine that the submitted Nevada State Plan does not meet certain CAMR requirements and, therefore, must be disapproved.

CAMR requires States to regulate emissions of mercury (Hg) from large coal-fired electric generating units (EGUs). CAMR establishes State budgets for annual EGU Hg emissions and requires States to submit State Plans that ensure that annual in-state EGU Hg emissions will not exceed the applicable State budget. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered CAMR cap-and-trade program. In the State Plan that EPA is proposing to disapprove, Nevada has chosen to meet CAMR requirements by participating in the EPA-administered CAMR cap-and-trade program addressing Hg emissions. However, Nevada's plan does not meet the mandatory timing requirements for allowance allocations, and differs substantively from certain required provisions of EPA's model rule (including the provision requiring unrestricted allowance transfer and trading).

DATES: Comments must be received on or before January 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2007–1150, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail:* EPA–R09–OAR–2007–1150, Andrew Steckel (Air-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

4. *Hand Delivery or Courier:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2007–1150. 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 should 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. 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: If you have questions concerning today's proposal, please contact Lily Wong, 75 Hawthorne Street, San Francisco, California 94105. The telephone number is (415) 947–4114. Ms. Wong can also be reached via electronic mail at *wong.lily@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing To Take?

EPA is proposing to disapprove Nevada's State Plan, submitted on November 15, 2006, because Nevada's submitted State Plan does not meet certain CAMR requirements necessary for participation in the EPA-administered CAMR cap-and-trade program. Nevada's plan requires EGUs to participate in the EPA-administered CAMR cap-and-trade program addressing Hg emissions. However, the State Plan does not meet the mandatory allocation timing requirements under 40 CFR 60.24(h)(6)(ii)(C) and (D) and differs substantively from certain required provisions of EPA's model rule at 40 CFR part 60, subpart HHHH (including the requirement to provide for unrestricted allowance transfer and trading). Furthermore, as an allowance system that does not meet the above requirements, Nevada's State Plan fails to state that Hg allowances issued under the Nevada CAMR program will not qualify as Hg allowances under the EPA-administered cap-and-trade program as required by 40 CFR 60.24(h)(7). Consequently, EPA is proposing to determine that the State Plan does not meet the applicable requirements of CAMR and to disapprove the plan on that basis.

II. What Is the Regulatory History of CAMR?

CAMR was published by EPA on May 18, 2005 (70 FR 28606, ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule''). In this rule, acting pursuant to its authority under section 111(d) of the Clean Air Act (CAA), 42 U.S.C. 7411(d), EPA required that all States meet Statewide annual budgets limiting Hg emissions from large coal-fired electric generating units (i.e., EGUs, as defined in 40 CFR 60.24(h)(8)). EPA further required all States to submit State Plans that include control measures that ensure that total, annual Hg emissions from new and existing EGUs do not exceed the applicable Statewide annual EGU Hg emissions budget. Under CAMR, States may implement these emissions limitations either by participating in the EPA-administered CAMR cap-and-trade program or by adopting other effective and enforceable control measures.

CAMR explains what must be included in State Plans and sets a deadline for submittal to EPA by November 17, 2006. Under 40 CFR 60.27(b), the Administrator will approve or disapprove the submitted State Plans. The purpose of this action is to propose disapproval of Nevada's CAMR State Plan.

III. What Are the General Requirements of CAMR State Plans?

CAMR establishes Statewide annual EGU Hg emission budgets implemented in two phases. The first phase starts in 2010 and continues through 2017. The second phase starts in 2018 and continues thereafter. CAMR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered CAMR cap-and-trade program; or (2) adopting other EGU control measures of the respective State's choosing and demonstrating that such control measures will result in compliance with the applicable State annual EGU Hg emissions budget.

Each State Plan must require EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Each State Plan must also show that the State has the legal authority to adopt the appropriate emission standards, compliance schedules, and other requirements.

IV. How Can States Comply With CAMR?

Many States have chosen to meet the CAMR requirements by requiring new and existing EGUs to participate in the EPA-administered CAMR cap-and-trade program while many other States have chosen to control Statewide annual Hg emissions for new and existing EGUs through an alternative mechanism. Each State that chooses an alternative mechanism must include with its plan a demonstration that the State Plan will ensure that the State will meet its assigned State annual EGU Hg emission budget.

A State submitting a State Plan that requires EGUs to participate in the EPA-administered CAMR cap-and-trade program may either adopt regulations that are substantively identical to the EPA model Hg trading rule (40 CFR part 60, subpart HHHH) or incorporate by reference the entire model rule. Alternatively, CAMR provides that a State requiring participation in the cap-and-trade program may adopt regulations, or an incorporation by reference, that make only limited changes to the model rule and must otherwise be substantively identical to the model rule. A State Plan may change the model rule only by altering the allowance allocation provisions to provide for a State-specific methodology for allocating Hg allowances. A State's alternative allowance allocation provisions must meet certain mandatory allocation timing requirements and must ensure that total allocations for each calendar year will not exceed the State's annual EGU Hg budget for that year.

A State may submit a State Plan that establishes an allowance system that does not meet the above-described requirements for participation in the EPA-administered CAMR cap-and-trade program and that does not require such participation, and EPA will review the State Plan on a case-by-case basis to determine if the plan meets CAMR requirements applicable to plans not involving such participation. However, such State Plans must state that Hg allowances issued under such an allowance system will not qualify as Hg allowances under the EPA-administered CAMR cap-and-trade program.

V. Analysis of Nevada's CAMR State Plan Submittal

The Nevada State Plan requires EGUs to participate in the EPA-administered CAMR cap-and-trade program. The State Plan incorporates by reference some provisions of the EPA model Hg trading rule (40 CFR part 60, subpart HHHH), but replaces other provisions of the model rule. In particular, the State has chosen to replace model rule provisions addressing retired units, the standard requirements for sources subject to the EPA-administered CAMR cap-and-trade program, the allocation of allowances, and the recordation of allowance allocations. Nevada's rule also added certain definitions to those in the model rule and adopted allowance allocation provisions establishing an alternate allowance allocation methodology.

Under CAMR, States may establish a different Hg allowance allocation methodology and still participate in the EPA-administered CAMR cap-and-trade program if certain mandatory requirements are met concerning the timing of submission of allocations to EGUs to the Administrator for recordation and the total amount of allowances allocated for each control period and if the State Plan is otherwise substantively identical to the model rule. In adopting alternative Hg allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations (e.g., whether allocations for each year will be determined in advance by an even longer period than under the mandatory allowance allocation timing requirements);
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size. *See* 70 FR 28627.

Nevada's alternative allowance allocation methodology effectively distributes Hg allowances based upon a unit's actual emissions. However, while Nevada's State Plan requires sources to participate in the EPA-administered CAMR cap-and-trade program and so does not state that Nevada-issued allowances will not qualify as Hg allowances under the EPA-administered program, Nevada's method for the allocation of allowances does not comply with the mandatory timing requirements of 40 CFR 60.24(h)(6)(ii)(C) and (D). Under 40 CFR 60.24(h)(6)(ii)(C) and (D), allowances for existing units must be allocated generally three years before, and allowances for new units must be allocated by October 31 of, the first control period for which the allowances may be used for compliance. Nevada's State Plan also differs substantively from certain other provisions of EPA's model rule that are required for participation in the EPA-administered CAMR cap-and-trade program. Specifically, Nevada's State Plan creates restrictions on allowance transfer and trading, fails to state that an allowance does not constitute a property right, substitutes the Director of the Nevada Division of Environmental Protection for the Administrator, lacks deadlines for recordation of allowance allocations, misstates the requirements for compliance with the requirement to hold allowances covering emissions, allows for Director's discretion to create an exception to the requirement that sources maintain records on-site, and allows for Director's discretion in specifying the content of CAMR permit applications and permits. These inconsistencies of Nevada's rule with the requirements of CAMR are discussed in detail in the Technical Support Document (TSD) entitled *EPA Proposed Analysis of Nevada Clean Air Mercury Rule State Plan*, which is included in the docket for this notice.

For these reasons, as discussed in detail in the TSD, Nevada's rule is not approvable under 40 CFR 60.24(h)(6) and (7).[1]

VI. Implications of State Plan Disapproval

Under 40 CFR 60.27(b), the Administrator must approve or disapprove timely submitted State Plans within four months of the deadline for their submission to the Administrator, i.e., November 17, 2006 in the case of CAMR State Plans. Moreover, under 40 CFR 60.27(c), the Administrator must propose a Federal Plan for States that did not submit State Plans by the submission deadline or whose timely submitted State Plans the Administrator disapproves. The Administrator must finalize a Federal Plan for such States under 40 CFR 60.27(d) within six months of the deadline for their submission to the Administrator, unless in the meantime the State submits a State Plan that the Administrator determines to be approvable. EPA's review of Nevada's State Plan continued beyond the deadline in 40 CFR 60.27(b) because of the complexity of Nevada's rule and because EPA conducted an extended dialogue with Nevada in order to understand the State's concerns and to try to resolve the issues raised by Nevada's State Plan.

In a separate action, EPA has proposed a Federal Plan and intends to issue a final Federal Plan in the near future. Any final Federal Plan will generally apply in those States that did not submit a State Plan by November 17, 2006, whose State Plans submitted by November 17, 2006 have been disapproved by EPA, or whose State Plans submitted after November 17, 2006 have not been approved. A final determination of the categories of States to which the Federal Plan will apply will be made in the notice finalizing a Federal Plan. If EPA finalizes the disapproval of Nevada's CAMR State Plan and finalizes the Federal Plan as described above, Nevada EGUs will be subject to the Federal Plan. It is EPA's intention to work quickly to review any revision of a disapproved State Plan, so that an approvable State Plan can be approved and take the place of the Federal Plan.

VII. 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 Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to disapprove State law as not meeting Federal requirements and would impose no additional requirements. Accordingly, the Administrator certifies that this proposed rule would 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 action proposes to disapprove pre-existing requirements under State law and would not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposal also does not have Tribal implications because it would 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 proposed action also does not have Federalism implications because it would 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 proposes to disapprove a State rule as failing to implement a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the

[1] EPA is acting on the final Nevada CAMR State Plan submitted on November 15, 2006. EPA recognizes that Nevada has since proposed revisions that would address some, but not all, of the approvability issues identified above. EPA is not addressing in this notice Nevada's proposed revisions as they have not yet been adopted or submitted. However, EPA notes that these proposed revisions do not address certain approvability issues, including those allocation timing and restrictions on allowance transfer and trading.

CAA. This proposed 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. It also does not concern an environmental health or safety risk the EPA has reason to believe may have a disproportionate effect on children.

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. EPA guidance [2] states that EPA is to assess whether minority or low-income populations face risk or a rate of exposure to hazards that is significant and that ''appreciably exceed[s] or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998) Because this rule merely proposes to disapprove a state rule as failing to implement the Federal standard established by CAMR, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. However, EPA has already considered the impact of CAMR, including this Federal standard, on minority and low-income populations. In the context of EPA's CAMR published in the **Federal Register** on May 18, 2005, in accordance with E.O. 12898, the Agency has considered whether CAMR may have disproportionate negative impacts on minority or low income populations and determined that it does not.

In reviewing State Plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA generally and CAMR specifically. 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 State Plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the CAA. 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 proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

[2] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping, Mercury.

Dated: December 3, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E7–24167 Filed 12–12–07; 8:45 am]

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Notices

Federal Register

Vol. 72, No. 239

Thursday, December 13, 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–2007–0138]

Notice of Request for Approval of an Information Collection; Customer/Stakeholder Satisfaction Surveys

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate new information collection activities, to conduct surveys of customer/stakeholder satisfaction for both the National Animal Health Monitoring System and the National Veterinary Services Laboratories.

DATES: We will consider all comments that we receive on or before February 11, 2008.

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–2007–0138 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–2007–0138, 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–2007–0138.

Reading Room: You may read any comments that we receive on this docket 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: For information on the Customer/Stakeholder Satisfaction Surveys, contact Mrs. Sandra Warnken, Management and Program Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E3, Fort Collins, CO 80526; (970) 494–7193. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: Title: Customer/Stakeholder Satisfaction Surveys for the National Animal Health Monitoring System and the National Veterinary Services Laboratories.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture is responsible for protecting the health of our Nation's livestock, poultry, and aquaculture populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible.

In connection with this mission, the Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock, poultry, and aquaculture disease risk factors.

NAHMS national studies have evolved into a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of livestock, poultry, and aquaculture. APHIS is the only agency responsible for collecting national data on livestock, poultry, and aquaculture health. Participation in any NAHMS study (including these surveys) is voluntary, and all data are confidential.

The National Veterinary Services Laboratories (NVSL) assists the NAHMS by providing testing services for many of the NAHMS projects. Primary functions of the NVSL also include providing diagnostic support for domestic diseases, potential foreign animal diseases, import/export programs, disease surveillance, and disease eradication efforts. The efforts of the NVSL are an essential part of preventing and controlling diseases of livestock, poultry, and aquaculture.

Information from the NAHMS studies is disseminated to and used by producers, animal health officials, private practitioners, animal industry groups, policy makers, public health officials, media, and educational institutions to improve the health and welfare, quality, and marketability of our Nation's livestock, poultry, and aquaculture. NAHMS staff also produces the U.S. Animal Health Report, which is an annual publication describing the status of animal health in the United States.

The purpose of customer/stakeholder satisfaction surveys is:

- To gather information from producers and other information users on the usefulness of studies and reports,
- To minimize producer burden,
- To increase response rates,
- To improve report quality and relevance to producers' and stakeholders' needs, and
- To improve laboratory performance.

Producers and stakeholders participate in the NAHMS program, utilize information from the NVSL, and/or read NAHMS reports. Therefore, administration of customer/stakeholder satisfaction surveys will benefit the study process and provide NAHMS and NVSL with information to make the programs more effective, with timely and relevant information.

NAHMS staff plans to obtain feedback from the U.S. Animal Health Report

Surveys, NAHMS Study Participant Surveys, and NAHMS Descriptive Reports Surveys. NVSL staff plans to obtain feedback from the annual NVSL Performance Surveys. Feedback from these surveys will be used to improve the U.S. Animal Health Report, to improve NAHMS Descriptive Reports, and to evaluate customer/stakeholder satisfaction in an effort to increase participation rates for NAHMS studies. The NVSL surveys will help monitor the NVSL's performance.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of burden on the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.267714 hours per response.

Respondents: Livestock, poultry, and catfish producers; information users; NAHMS Descriptive Report Recipients; Animal Health Report recipients; practicing veterinarians; animal importers/exporters; State and independent laboratories.

Estimated annual number of respondents: 35,700.

Estimated annual number of responses per respondent: 0.2585434.

Estimated annual number of responses: 9,230.

Estimated total annual burden on respondents: 2,471 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24171 Filed 12–12–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0030]

Monsanto Company; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for insect-resistant corn derived from a transformation event designated as MON 89034. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting comments on whether this genetically engineered corn is or could be a plant pest. We are also making available for public comment a draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive on or before February 11, 2008.

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–2007–0030 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–2007–0030, 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–2007–0030.

Reading Room: You may read any comments that we receive on this docket 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: Dr. Robyn Rose, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0489, e-mail: *robyn.i.rose@aphis.usda.gov*. To obtain copies of the petition or the environmental assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov*. The petition and the environmental assessment are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/06_29801p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/06_29801p_ea.pdf.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status

must take and the information that must be included in the petition.

On October 26, 2006, APHIS received a petition seeking a determination of nonregulated status (APHIS No. 06–298–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, for corn (*Zea mays* L.) designated as transformation event MON 89034, which has been genetically engineered for resistance to European corn borer (ECB) and other lepidopteran pests, stating that corn line MON 89034 does not present a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340. Monsanto responded to APHIS' subsequent request for additional information and clarification and submitted an addendum to their petition on January 23, 2007. The petition is available for public review and comment.

Analysis

As described in the petition, corn transformation event MON 89034 has been genetically engineered to express the transgenes *cry1A.105* and *cry2Ab2*, both of which were derived from a well-characterized gene sequence from *Bacillus thuringiensis*, and encode insect control proteins. The neomycin phosphotransferase II (*nptII*) gene was used as a selectable marker, but was eliminated by traditional breeding methods in the later stages of development of MON 89034. Thus, MON 89034 contains only the *cry1A.105* and *cry2Ab2* expression cassettes. Expression of the transgenes by corn plants renders the corn line resistant to European corn borer, as well as other lepidopteran pests. Regulatory elements for the transgenes were obtained from *Agrobacterium tumefaciens*. These regulatory sequences are not transcribed and do not encode proteins. The DNA was introduced into corn cells using *Agrobacterium*-mediated transformation methodology with the T–DNA binary transformation vector designated PV–ZMIR245.

Transformation event MON 89034 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. MON 89034 corn has been field tested in the United States since 2001 under notifications and permits authorized by the U.S. Department of Agriculture (USDA). APHIS has presented two alternatives in the draft environmental assessment (EA) based on its analyses of data submitted by Monsanto, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS may: (1) Take no action (MON 89034 remains a regulated article), or (2) deregulate MON 89034.

In § 403 of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: a protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition broadly to cover direct or indirect injury, disease, or damage not just to agricultural crops, but also to other plants, for example, native species, as well as to plant parts and plant products whether natural, manufactured, or processed.

MON 89034 corn is subject to regulation by other Federal agencies. The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt from EPA regulation. In cases in which genetically engineered plants allow for a new use of a pesticide or involve a different use pattern for the pesticide, EPA must approve the new or different use. On July 17, 2006, the EPA announced a temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-incorporated protectant (PIP). The temporary tolerance exemption will expire on June 30, 2009 (71 FR 40427–40431). On July 17, 2006, EPA announced a temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a PIP. The temporary tolerance exemption will expire on June 30, 2009 (71 FR 40431–40436). Pursuant to its authority under the Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 *et seq.*), EPA conducted a comprehensive assessment of the Cry1A.105 and Cry2Ab2 proteins and the genetic material necessary for their production in corn concluding that there was a reasonable certainty of no harm from consumption of the protein, as it is digestible in gastric fluid and not considered an allergen.

Under the FFDCA, pesticides added to (or contained in) raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Residue tolerances for pesticides are established by EPA under the FFDCA and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA's policy statement concerning regulation of products derived from new plant varieties, including those genetically engineered, was published in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). Under this policy, FDA uses what is termed a consultation process to ensure that human and animal feed safety issues or other regulatory issues (e.g., labeling) are resolved prior to commercial distribution of a bioengineered food. Monsanto submitted a summary of their safety assessment to the FDA on October 13, 2006. The FDA consultation for MON 89034 corn as food and feed is currently underway.

National Environmental Policy Act

A draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for MON 89034. The draft EA was 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 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the draft EA prepared to examine any environmental impacts of the proposed determination for the deregulation of the subject corn event. The petition, the draft EA, and any comments received are available for public review, and copies of the petitions and the draft EA are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments

received during the comment period and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's insect-resistant corn event MON 89034 and the availability of APHIS' written regulatory and environmental decisions.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24174 Filed 12–12–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0150]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, and other interested individuals, that we will be holding our 14th public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. We are planning the meeting agenda and are requesting suggestions for topics of general interest to producers and other interested individuals.

DATES: The public meeting will be held Monday, April 7, through Wednesday, April 9, 2008, from noon to approximately 5 p.m. on Monday, from 8:30 a.m. to approximately 5 p.m. on Tuesday, and from 8 a.m. to approximately noon on Wednesday.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics, contact Dr. Byron E. Rippke, Director, Policy, Evaluation, and Licensing, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail *CVB@aphis.usda.gov.* For registration information, contact Ms. Betty Light at the same address and fax number; phone (515) 232–5785 extension 127; or e-mail *Betty.J.Light@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Since 1989, the Animal and Plant Health Inspection Service (APHIS) has held 13 public meetings in Ames, IA, on veterinary biologics. The meetings provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. APHIS is in the process of planning the agenda for the 14th such meeting, which will be held April 7 through 9, 2008.

The agenda for the meeting is not yet complete. The theme for this year's meeting is influenza. Topics that have been suggested include: (1) Avian, swine, and equine influenza-related topics; (2) pandemic influenza preparedness and related issues; (3) conditional licenses for canine influenza vaccines; (4) influenza diagnostics (rapid and otherwise); and (5) Veterinary Services and Center for Veterinary Biologics related issues. Before finalizing the agenda, APHIS is seeking suggestions for additional meeting topics from the interested public.

We would also like to invite interested individuals to use this meeting to present their ideas and suggestions concerning the licensing, manufacturing, testing, distribution, and regulation of products designed to diagnose, prevent, or treat animal diseases.

Please submit suggested meeting topics and proposed presentation titles to Dr. Byron E. Rippke (see **FOR FURTHER INFORMATION CONTACT** above) on or before January 30, 2008. For proposed presentations, please include the name(s) of the presenter(s) and the approximate amount of time that will be needed for each presentation.

After the agenda is finalized, APHIS will announce the agenda topics in the **Federal Register**.

Done in Washington, DC, this 7th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24170 Filed 12–12–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 49–2007]

Foreign–Trade Zone 22 Chicago, Illinois

Application for Subzone: Sony Electronics Inc. (Audio, Video, Communications and Information–Technology Products and Accessories), Romeoville, Illinois

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting special–purpose subzone status for the warehousing and distribution facility of Sony Electronics Inc. (Sony), located in Romeoville, Illinois. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 4, 2007.

The Sony facility (50–150 employees, 25 acres, 562,624 square feet) is located at 99 North Pinnacle Drive, in Romeoville, Illinois. The facility is used for the storage, distribution, packaging, kitting, inspecting, testing and repair of audio, video, communications and information–technology products and accessories.

Zone procedures would exempt Sony from customs duty payments on products that are re–exported. Some 5 percent of the products are re–exported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the facilities and entered for consumption. FTZ designation would further allow Sony to utilize certain customs procedures resulting in increased efficiencies for its logistics and distribution operations. In addition, Sony is requesting authority to choose the duty rates during customs entry procedures that apply to kits and accessory sets, including digital camera and camcorder kits (duty rate ranges from duty–free to 2.1%) for the following imported components: memory sticks, digital still cameras, digital camcorders, refill paper packs, photo printers, DVD players, home theaters and rechargeable battery packs (duty rate ranges from duty–free to 4.5%). The company has also indicated that it will import soft carrying cases (HTS 4202 and 5911, duty rate ranges from 2–17.6%), but that they will be admitted to the zone in privileged foreign status. The request indicates that the savings from FTZ procedures would

help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 11, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 26, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:
U.S. Department of Commerce Export Assistance Center, 200 West Adams Street, Suite 2450 Chicago, IL 60606.
Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: December 4, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–24185 Filed 12–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspension agreement, intent to terminate the five-year sunset review, and intent to resume antidumping investigation: fresh tomatoes from Mexico.

SUMMARY: On November 26, 2007, Mexican tomato growers accounting for a large percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of Commerce of their withdrawal from the agreement suspending the antidumping investigation on fresh tomatoes from Mexico. Because the suspension agreement will no longer cover substantially all imports of fresh tomatoes from Mexico, the Department of Commerce intends to terminate the suspension agreement, terminate the five-year sunset review, and resume the antidumping investigation.

DATES: *Effective Date:* December 13, 2007.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Jay Carreiro at (202) 482–0192 or (202) 482–3674, respectively; Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 353 (1996).

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1996, the Department initiated an antidumping investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) (61 FR 18377, April 25, 1996). On May 16, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination.

On October 10, 1996, the Department and Mexican tomato growers initialed a proposed agreement to suspend the antidumping investigation. On October 28, 1996, the Department preliminarily determined that imports of fresh tomatoes from Mexico are being sold at LTFV in the United States. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico,* 61 FR 56608 (November 1, 1996) (''*Preliminary Determination*''). On the same day on which the Department issued the *Preliminary Determination*, the Department and certain growers/exporters of fresh tomatoes from Mexico signed an agreement to suspend the investigation (1996 Suspension Agreement). *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 61 FR 56618 (November 1, 1996).

On May 31, 2002, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 1996 Suspension Agreement, effective July 30, 2002. Because the 1996 Suspension Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, effective July 30, 2002, the Department terminated the 1996 Suspension Agreement, terminated the sunset review of the suspended investigation, and resumed the antidumping investigation. *See Notice of Termination of Suspension Agreement, Termination of Sunset Review, and Resumption of Antidumping Investigation: Fresh Tomatoes from Mexico,* 67 FR 50858 (August 6, 2002).

On November 8, 2002, the Department and Mexican tomato growers/exporters initialed a proposed agreement suspending the resumed antidumping investigation on imports of fresh tomatoes from Mexico. On December 4, 2002, the Department and certain growers/exporters of fresh tomatoes from Mexico signed a new suspension agreement (''2002 Suspension Agreement''). *See Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico,* 67 FR 77044 (December 16, 2002). On November 3, 2003, the Department published the *Final Results of Analysis of Reference Prices and Clarifications and Corrections; Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico,* 68 FR 62281 (November 3, 2003).

On November 26, 2007, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 2002 Suspension Agreement.

Scope of the Investigation

The merchandise subject to this investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.*, tomatoes used

in the preparation of fresh salsa or salad bars), are covered by this Agreement.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Intent To Terminate Suspension Agreement and Resume the Antidumping Investigation

On November 26, 2007, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 2002 Suspension Agreement, effective 90 days from the date of their withdrawal letter, or earlier, at the Department's discretion. Based on the withdrawal of the growers/exporters accounting for a significant percentage of exports of tomatoes to the United States from the 2002 Suspension Agreement, the 2002 Suspension Agreement will no longer cover substantially all imports of fresh tomatoes from Mexico. Accordingly, the Department intends to terminate the 2002 Suspension Agreement, effective no later than February 24, 2008.

Intent To Resume Antidumping Investigation

With the termination of the suspension agreement, in accordance with section 734(i)(1)(B) of the Act, the Department intends to resume the underlying antidumping investigation. Pursuant to section 734(i)(1)(B) of the Act, the Department intends to resume the investigation as if it had published the affirmative preliminary determination under section 733(b) of the Act on the effective date of the termination. As explained in the *Preliminary Determination* at 61 FR 56609, the Department postponed the final determination until the 135th day after the date of the preliminary determination. The Department therefore intends to make its final determination in the resumed investigation within 135 days of termination of the 2002 Suspension Agreement.

Intent To Terminate the Five-Year Sunset Review

On November 1, 2007, the Department initiated a five-year sunset review of the suspended antidumping investigation on fresh tomatoes from Mexico pursuant to section 751(c) of the Act (*See Initiation of Five-Year (''Sunset'') Reviews,* 72 FR 61861 (November 1, 2007).

If the Department terminates the 2002 Suspension Agreement, there will no longer be a suspended investigation of which to perform a sunset review. Therefore, the Department announces its intent to terminate the sunset review of the suspended LTFV investigation on fresh tomatoes from Mexico, effective on the date of termination of the 2002 Suspension Agreement.

International Trade Commission

The Department has notified the International Trade Commission (ITC) of its intent to terminate the 2002 Suspension Agreement and resume the LTFV investigation. If the Department makes a final affirmative determination, the ITC is scheduled to make its final determination concerning injury within 45 days after publication of the Department's final determination. If both the Department's and the ITC's final determinations are affirmative, the Department will issue an antidumping duty order.

Suspension of Liquidation

The Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of fresh tomatoes from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the termination of the 2002 Suspension Agreement. CBP shall require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins, which range from 4.16 to 188.45 percent.

Administrative Protective Order Access

Administrative protective orders previously granted in the original investigation will remain in effect. Any necessary amendments for changes in staff must be submitted promptly. Parties must use the APO application form in effect at the time of the original investigation, Form ITA–367 (3.89).

This determination is issued and published in accordance with section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(1996).

Dated: December 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–24187 Filed 12–12–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from the Netherlands. The period of review (POR) is December 27, 2004, through June 30, 2006. We received comments from interested parties and have made changes to the margin for the final results. The final margin for the respondent is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 13, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2007, the Department published the preliminary results of the administrative review of the antidumping duty order on CMC from the Netherlands. *See Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 44099 (August 7, 2007) (*Preliminary Results*). On August 7, 2007, the Department issued an additional supplemental questionnaire to CP Kelco B.V. and Noviant B.V. (collectively, CP Kelco), respondent in this administrative review, requesting that it report third country and U.S. sales factoring expenses on a transaction–specific basis to the Department. CP Kelco submitted its response on August 15, 2007. *See* Letter

from Arent Fox, LLP to the Secretary of Commerce dated August 15, 2007 (Factoring Expenses Supplemental Response). For a further discussion of CP Kelco's factoring expenses, *see* ''Changes Since the Preliminary Results'' section below. We invited interested parties to comment on the *Preliminary Results*. On September 6, 2007, CP Kelco filed with the Department its case brief on the *Preliminary Results*. On September 11, 2007, The Aqualon Company, a division of Hercules Incorporated (petitioner) filed its rebuttal brief to CP Kelco's September 6, 2007, case brief. We received no requests for a public hearing from the parties.

Scope of the Antidumping Duty Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the ''Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands,'' dated December 3, 2007 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://www.trade.gov/ia/ . The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculation for CP Kelco, which include corrections to clerical errors made at the *Preliminary Results* with regard to foreign currency conversions. Additionally, as stated above, CP Kelco submitted its Factoring Expenses Supplemental Response on August 15, 2007. Petitioner did not comment on these data in its case and rebuttal briefs. Following our review of these data, we have determined that it is appropriate to revise our calculation of both comparison market and U.S. market net price using the transaction–specific factoring expenses (*i.e.*, transaction fees charged to CP Kelco by its affiliated financial institution for purchasing CP Kelco's account receivables and remitting payment to CP Kelco at an earlier date than payment would have been otherwise received from the invoiced customer) reported by CP Kelco in the Factoring Expenses Supplemental Response. For a discussion of the changes to the margin calculations for CP Kelco, *see* Memorandum to the File entitled, ''First Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands: Analysis Memorandum for the Final Results of Review for CP Kelco B.V.,'' from Stephen Bailey, Case Analyst, dated December 3, 2007 (Final Analysis Memo). A public version of this memorandum is on file in the CRU.

Final Results of Review

In the *Preliminary Results*, we preliminarily determined that CP Kelco B.V., as it alleged, is the successor–in-interest to the former Noviant B.V. for purposes of this proceeding and application of the antidumping law. We did not receive comments on this issue and have no reason to change our findings from the *Preliminary Results*. For a complete discussion of our successorship analysis, *see Preliminary Results* at 44101.

Accordingly, we determine that CP Kelco B.V. is the successor–in-interest to Noviant B.V., and that the following antidumping duty margin exists for the period December 27, 2004, through June 30, 2006:

Manufacturer/Exporter	Weighted–Average Margin (Percent)
CP Kelco B.V.	4.59

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review. Upon issuance of the final results of this review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), we will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. To determine whether the duty–assessment rate covering the period is *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated an importer–specific assessment *ad valorem* rate by aggregating the dumping margins calculated for all U.S. sales to the importers of CP Kelco's subject merchandise and dividing this amount by the total entered value of the sales to that importer. Where the importer–specific *ad valorem* rate is greater than *de minimis*, we will instruct CBP to apply the assessment rate to the entered value of the importer's entries during the POR. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by CP Kelco, for which CP Kelco did not know that the merchandise it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no company–specific rate for an intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of CMC from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rate for CP Kelco will be 4.59 percent; (2) for merchandise exported by producers or exporters that were previously investigated, the cash deposit will continue to be the most recent rate published in the final determination for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review or the original less–than-fair–value investigation (LTFV) but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash–deposit rate shall be 14.57 percent, the all–others rate established in the less–than-fair–value investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands*, 70 FR 28275 (May 17, 2005). These cash–deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 3, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I

Comment 1: Alleged Errors Regarding Foreign Currency Conversions
Comment 2: Excluded Constructed Export Price Sales
Comment 3: Zeroing of Non–Dumping Margins

[FR Doc. E7–24186 Filed 12–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Consent Motion To Terminate Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate Panel Review of the Final Injury Determination Under Section 129 of the Uruguay Round Agreements Act made by the International Trade Commission, respecting Certain Softwood Lumber from Canada (Secretariat File No. USA–CDA–2005–1904–03).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the case participants, the panel review is terminated as of December 7, 2007. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: December 10, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–24162 Filed 12–12–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE31

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application submitted by Truex Enterprises contains all the required information and warrants further consideration. The proposed EFP would test the safety and efficacy of harvesting surfclams and ocean quahogs from the Atlantic surfclam and ocean quahog Georges Bank (GB) Closure Area using a harvesting protocol developed by state and Federal regulatory agencies and endorsed by the U.S. Food and Drug Administration (FDA). The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Surfclam and Ocean Quahog regulations and Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is

made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for an exemption from the Atlantic surfclam and ocean quahog GB Closure Area. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before December 28, 2007.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA6114C@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on GB PSP Closed Area Exemption.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on GB PSP Closed Area Exemption.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

Copies of supporting documents referenced in this notice are available from George H. Darcy, Assistant Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, and are available via the Internet at *http://www.nero.noaa.gov/sfd/clams*.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: Truex Enterprises of New Bedford, MA, first submitted an application for an EFP on March 30, 2006, and public comment was solicited via the **Federal Register** on June 19, 2006 (71 FR 35254). On October 2, 2006, the applicant submitted additional information seeking to add states where the product harvested under the EFP could be landed. Comments for the revised EFP were published on November 14, 2006 (71 FR 66311). At that time, due to lack of concurrence on the Protocol for Onboard Screening and Dockside Testing for PSP Toxins in Molluscan Shellfish (Protocol) from the state of landing, the EFP was not issued. The applicant has since received concurrence from the state of landing and the state where the product is to be processed for the Protocol and EFP, thus the applicant has re-initiated the EFP application.

The exempted fishing application requests authorization to allow the catch and retention for sale of Atlantic surfclams and ocean quahogs from within the Atlantic surfclam and ocean quahog GB Closure Area. This area, located east of 69°00 W. long. and south of 42°20 N. lat., has been closed since May 25, 1990. This closure was implemented based on advice from the FDA after samples of surfclams from the area tested positive for the toxins (saxotoxins) that cause Paralytic Shellfish Poisoning (PSP). These toxins are produced by the algae *Alexandrium fundyense*, which can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the saxotoxin, if eaten in large enough quantity, can cause illness or death from PSP. Due, in part, to the inability to test and monitor this area for the presence of PSP, this closure was made permanent through Amendment 12 to the FMP in 1999.

The primary goal of the proposed study is to test the efficacy of the Protocol that was developed by state and Federal regulatory agencies to test for presence of saxotoxins in shellfish. This protocol would facilitate the harvest of shellfish from waters susceptible to HABs, which produce the saxotoxins, but that are not currently under rigorous water quality monitoring programs by either state or Federal management agencies. The Protocol details procedures and reporting for harvesting, testing, and landing of shellfish harvested from areas that are susceptible to HABs prior to the shellfish from entering commerce. A copy of the Protocol is available from the NMFS Northeast Region website: *http://www.nero.noaa.gov/sfd/clams*.

The proposed project would conduct a trial for the sampling protocol in an exemption zone within the larger 1990 GB Closure Area with the F/V Sea Watcher I. The exemption zone would not include any Northeast multispecies or essential fish habitat year-round closure areas. This proposed exempted fishing activity would occur from approximately December 2007 through November 2008, using surfclam and ocean quahog quota allocated to Truex Enterprises under the Federal individual transferable quota (ITQ) program. The applicant has estimated a harvest of 176,000 bushels (9,370,240 L) of surfclams and 80,000 bushels (4,259,200 L) of ocean quahogs from the exemption area. The exemption area was tested in cooperation with the FDA in the winter of 2006. No samples collected during that time were above acceptable levels for saxotoxins (80µg toxin/100g of shellfish).

The applicant has obtained endorsements for the EFP and the Protocol from the States of New Jersey and Delaware, the states in which it intends to land and process the product harvested under the EFP, respectively. Each state is responsible for regulating the molluscan shellfish industry within its jurisdiction and ensuring the safety of shellfish harvested within or entering its borders. This EFP would allow for an exemption from the Atlantic surfclam and ocean quahog GB Closure Area specified at 50 CFR 648.73(a)(4).

Comments received during the comment period for the EFP notice published on June 19, 2006 (71 FR 35254), were addressed in the November 14, 2006, notice. During the comment period for the EFP as re-proposed on November 14, 2006 (71 FR 66311), NMFS received two comments. The two commenters were opposed to the issuance of the EFP until concerns regarding the dockside sampling protocol could be resolved. Although adherence to the dockside monitoring protocol would be a condition of the EFP, NMFS is not the author of the protocol, nor the Federal agency responsible for matters of public health. Thus, NMFS defers to the FDA to respond to issues regarding the dockside monitoring protocol. A letter dated July 25, 2007, from the FDA to the Massachusetts Department of Public Health (Department), addressed 14 concerns raised by the Department. In addition, the FDA has amended the Protocol in response to concerns raised by state shellfish control authorities. The most recent version was issued in August 2007. These documents are available from the Regional Administrator and via the Internet (see **ADDRESSES**). The Protocol and the pilot project that would be authorized by this EFP have also since been endorsed by the executive board of the Interstate Shellfish Sanitation Conference.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 7, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–24074 Filed 12–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Plenary Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open 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 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: January 15 & 16, 2008.

Time(s) of Meeting: 0800–1700, January 15, 2008.

0800–1600, January 16, 2008.

Place of Meeting: University of Maryland University College (UMUC) Inn and Conference Center, Adelphi, MD. 3501 University Boulevard E, Adelphi, MD.

FOR FURTHER INFORMATION CONTACT: For information please contact Ms. Sharon Harvey at *sharon.harvey1@us.army.mil* or (703) 604–7466 or Mr. Wayne Joyner at *wayne.joyner@saalt.army.mil* or (703) 604–7490.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* The Army Science Board will meet on January 15 & 16, 2008 at the University of Maryland University College (UMUC) Inn and Conference Center. Purpose of the meeting on both days is to allow each study; Generation Force Functional Census, Institutionalized Lifecycle Management of Innovation Organizations, Information Operations, and Persistent CSR to collect data and hold discussions as it relates to each individual study.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E7–24151 Filed 12–12–07; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Conservation Measures for Transfer of Federal Land at Parks Reserve Forces Training Area, Dublin, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of requirement.

SUMMARY: Pursuant to the proposed conservation measures found within the U.S. Fish and Wildlife Service Biological Opinion #1106F1752 dated December 18, 2006, acceptance of any portion of the 170.5-acre land exchange property located at Parks Reserve Forces Training Area (PFRTA), Dublin, CA is conditioned on the developer engaging the U.S. Fish and Wildlife Service in Section 7 or Section 10 Endangered Species Act consultation prior to the development of the aforementioned land. This consultation requirement is because of the potential loss of habitat and potential for take of the endangered San Joaquin Kit Fox (*Vulpes macrotis mutica*), the threatened California red-legged frog (*Rana aurora draytonii*), and the threatened California tiger salamander (*Ambystoma californiense*).

ADDRESSES: Public Affairs Office, U.S. Army CTSC, Camp Parks, 790 5th Street, Dublin, CA 94568–5201.

FOR FURTHER INFORMATION CONTACT: Amy Phillips, (925) 875–4298, *amy.phillips@usar.army.mil.*

SUPPLEMENTARY INFORMATION: A Request for Proposal (RFP) regarding the 170.5-acre land exchange property will be available upon request.

Kevin R. Riedler,

Colonel, U.S. Army, Commanding.

[FR Doc. E7–24193 Filed 12–12–07; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for Expansion of Lake Worth Inlet (Palm Beach Harbor), FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

COOPERATING AGENCY: Port of Palm Beach District, Riviera Beach, Florida.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps (Corps) of Engineers intends to prepare a Draft Environmental Impact Statement (EIS) for expansion, including widening and deepening of existing channels and turning basins in Lake Worth Inlet (Palm Beach Harbor). The project is a cooperative effort between the U.S. Army Corps of Engineers (lead Federal agency) and Port of Palm Beach District (non-Federal sponsor and cooperating agency).

ADDRESSES: Ms. Catherine L. Brooks, U.S. Army Corps of Engineers, Jacksonville District, Planning Division, Environmental Section, P.O. Box 4970, Jacksonville, FL 32207.

FOR FURTHER INFORMATION CONTACT: Catherine L. Brooks at (904) 232–2130.

SUPPLEMENTARY INFORMATION: Authority for the proposed study was received under the House Resolution of June 25, 1998. An expedited Reconnaissance Report completed in 2001 by the Corps, concluded based on preliminary findings, there was a federal interest in pursuing harbor improvements.

Alternatives: The project's expansion alternatives include no action, creation of channel flares, wideners, deepening, turning basin, or a combination of the considered alternatives. Alternatives being considered for disposal of dredged material include Peanut Island (with possible off-load to another use or location), ocean disposal in the Palm Harbor Ocean Dredged Material Disposal Site (which may require expansion or modification), beach placement (if there is sufficient beach compatible material), artificial reef (if there is sufficient suitable rock) and any other disposal or beneficial use options that may become available.

Issues: The EIS will consider impacts on coral reefs and other hardbottom communities, sea grasses, protected species, shore impacts, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, navigation, and other impacts identified through scoping, public involvement and interagency coordination.

Scoping: The scoping process will involve Federal, State, County and municipal agencies and other interested persons and organizations. A public and agency scoping meeting will be held on January 9, 2008, at 3 p.m. at the Port of Palm Beach, One East 11th Street, Riviera Beach, FL 33404.

Public Involvement: We invite the participation of affected Federal, State and local agencies, affected Native-American Tribes, and other interested private organizations and individuals. In addition to the agency and public scoping meeting on January 9, 2008, and receipt of written comments at various stages of the Feasibility Study, there will be a public meeting on the Draft Environmental Impact Statement following its preparation. The date, time, and location will be announced.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and NOAA-National Marine Fisheries Service (under Section 7 of the Endangered Species Act) and the Wildlife Coordination Act (FWS only). The proposed action is also being coordinated with the Florida State

Historic Preservation Officer, the U.S. Coast Guard, and the U.S. Environmental Protection Agency.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b)(1) of the Clean Water Act, water quality certification (application to the State of Florida) pursuant to Section 401 of the Clean Water Act, certification of state lands, easements, and rights-of-way, determination of Coastal Zone Management Act Consistency, and the use of the Ocean Dredged Material Disposal Site for Palm Beach Harbor pursuant to the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act).

Agency Role: As the cooperating agency, non-Federal sponsor and leading local expert, the Port of Palm Beach will provide information and assistance on the resources to be impacted, mitigation measures and alternatives. Other agencies having either regulatory authority or special expertise may also be invited to become a cooperating agency in preparation of the EIS.

Draft EIS Preparation: It is estimated that the Draft EIS will be available to the public by November 2008. As the study and EIS develop, additional information will be posted under Palm Beach County on the Jacksonville District's Environmental Documents web page at: *http://planning.saj.usace.army.mil/envdocs/envdocsb.htm*. The status of any Florida Department of Environmental Protection application submitted for permit of this action will be posted on the internet at: *http://www.dep.state.fl.us/beaches/permitting/permits.htm*.

Dated: December 6, 2007.

Marie G. Burns,

Acting Chief, Planning Division.

[FR Doc. E7–24150 Filed 12–12–07; 8:45 am]

BILLING CODE 3710–AJ–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

U.S. Army Corps of Engineers (Corps) Regulatory Guidance Letter (RGL) 07–02: Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches under Section 404 of the Clean Water Act (CWA)

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of availability.

SUMMARY: The Corps issued RGL 07–02 to further explain the regulatory exemptions for construction or maintenance of irrigation ditches and maintenance of drainage ditches consistent with Section 404(f) of the CWA (33 U.S.C. 1251 et seq.) and implementing regulations. Specifically, the RGL clarifies when Section 404(f) exempts from permitting requirements discharges of dredged or fill material into waters of the United States associated with the construction and maintenance of irrigation ditches and maintenance of drainage ditches. The RGL also clarifies how certain terms in the regulations at 33 CFR 323.4 are applied in the context of the Sections 404(f) exemptions, including irrigation ditch, drainage ditch, construction, and maintenance. In addition, the guidance provides a framework for determining the applicability of the exemptions and the recapture provision, consistent with the CWA and implementing regulations. This RGL was effective July 4, 2007.

DATES: Comments must be received on or before February 11, 2008.

ADDRESSES: Submit your comments, identified by docket number COE–2007–0038, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Kimberly.S.McLaughlin@usace.army.mil.* Include the docket number, COE–2007–0038 in the subject line of the message.
- *Mail:* 441 G Street, NW., Washington, DC 20314.
- *Hand Delivery:* 441 G Street, NW., Washington, DC 20314. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket number COE–2007–0038. The Corps's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the Corps 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 the Corps 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, the Corps 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 the Corps cannot read your comment due to technical difficulties and cannot contact you for clarification, the Corps 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 *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 441 G Street, NW., Washington, DC 20314. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kim McLaughlin, Regulatory Community of Practice (CECW–CO), U.S. Army Corps of Engineers, Headquarters, 441 G Street, NW., Washington, DC 20314; telephone number: (202) 761–7763; fax number: (202) 761–5096; e-mail address: *Kimberly.S.McLaughlin@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

I. General Information

The Corps is requesting public comment on RGL 07–02, which is available at: *http://www.usace.army.mil/cw/cecwo/reg/rgls/rgl07–02.pdf.*

At the same time, the Corps appreciates that the public has considerable interest in the issues addressed in this guidance. The Corps is particularly interested in hearing from the public regarding their actual experience with implementing the guidance. The Corps is providing a 60-day public comment period, and encourages the public to provide comments informed by actual experience. To assure the public of our commitment to carefully consider their comments, and to address issues that

may unexpectedly arise during implementation of the guidance, the Corps may within one year from the date of issuance reissue, revise, or suspend the guidance. The Corps intends to provide examples and best management practices, including clarification of key terminology, upon receipt and consideration of public comments.

Dated: December 4, 2007.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–24191 Filed 12–12–07; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Elementary and Secondary School Counseling Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215E.

DATES:

Applications Available: December 13, 2007.

Deadline for Transmittal of Applications: January 28, 2008.

Deadline for Intergovernmental Review: March 27, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Elementary and Secondary School Counseling Program is to support efforts by local educational agencies (LEAs) to establish or expand elementary school and secondary school counseling programs.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5421 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) (20 U.S.C. 7245).

Absolute Priority: For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Establish or expand counseling programs in elementary schools, secondary schools, or both.

Definitions: The following definitions are from 34 CFR part 77 and apply to this competition:

Elementary school means a day or residential school that provides elementary education, as determined under State law.

Secondary school means a day or residential school that provides secondary education, as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

Program Authority: 20 U.S.C. 7245.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2008 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program. Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2008 and in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000–$400,000.

Estimated Average Size of Awards: $350,000.

Maximum Award: $400,000.

Note: Section 5421(a)(5) of ESEA limits the amount of a grant under this program in any one year to a maximum of $400,000.

Estimated Number of Awards: 50.

Note: Section 5421(g)(1) of ESEA requires that for any fiscal year in which the amount of funds made available by the Secretary for this program equals or exceeds $40,000,000, the Secretary shall award not less than $40,000,000 to enable LEAs to establish or expand counseling programs in elementary schools. Under this notice applicants may propose projects that establish or expand counseling programs in elementary schools, secondary schools, or both.

Note: We will use the highest grade an applicant proposes to serve under its grant to determine if the application will be considered for funding from amounts available for elementary school counseling programs only or from amounts available for elementary or secondary school counseling programs (or both), along with the applicant State's law that defines what grade levels constitute an elementary school in the State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) LEAs, including charter schools that are considered LEAs under State law.

(b) LEAs that currently have an active grant under the Elementary and Secondary School Counseling Program are not eligible to apply for an award in this competition. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program has supplement-not-supplant funding requirements. Section 5421(b)(2)(G) of ESEA requires applicants under this program to assure that program funds will be used to supplement, and not supplant, any other Federal, State, or local funds used for providing school-based counseling and mental health services to students.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/elseccounseling/applicant.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.215E.

To obtain a copy from the program office, contact: Loretta McDaniel, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E214, Washington, DC 20202–6450. Telephone: (202) 260–2661 or by e-mail:

Loretta.McDaniel@ed.gov If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: December 13, 2007.

Deadline for Transmittal of Applications: January 28, 2008.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: March 27, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Section 5421(d) of ESEA requires that no more than four percent of a grant award may be used for administrative costs to carry out the project. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Elementary and Secondary School Counseling Program, CFDA Number 84.215E, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Elementary and Secondary School Counseling Program at *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215E).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this

paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.215E),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260;

or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center, Stop 4260, Attention: (CFDA Number 84.215E), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215E), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are from section 5421(a)(3) of ESEA, which requires an equitable geographic distribution among the regions of the United States and among LEAs located in urban, rural, and suburban areas.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual

performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for the Elementary and Secondary School Counseling Program: (1) The percentage of grantees closing the gap between their student/mental health professional ratios and the student/mental health professional ratios recommended by the statute; and (2) the average number of referrals per grant site for disciplinary reasons in schools participating in the program.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for the applicant's proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about the grantee's progress against these measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Loretta McDaniel, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E214, Washington, DC 20202–6450. Telephone: (202) 260–2661 or by e-mail: *Loretta.McDaniel@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You can view this document in text or PDF at the following site: *http://www.ed.gov/programs/elseccounseling/applicant.html*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: December 7, 2007.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E7–24183 Filed 12–12–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–7–000]

Bay Gas Storage Company, Ltd.; Notice of Petition for Rate Approval

December 5, 2007.

Take notice that on November 30, 2007, Bay Gas Storage Company, Ltd., (Bay Gas Storage) filed pursuant to section 311 of the Natural Gas Policy Act of 1978, and section 284.123 of the Commission's regulations, a petition for market based rates for continued firm and interruptible storage services, and for new interruptible hub services, including wheeling services, for Bay Gas Storage's operations at its underground salt dome cavern natural gas storage facilities, and related transportation facilities, in Washington and Mobile Counties, Alabama, and a proposed definition of such interruptible transportation wheeling service. Bay Gas Storage states that it does not have market power in any relevant product or geographic market for storage services and has submitted a market power study with its petition, which supports the conclusion that Bay Gas Storage lacks market power.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 17, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24099 Filed 12–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–44–001]

El Paso Electric Company; Notice of Filing

December 5, 2007.

Take notice that on July 23, 2007, El Paso Electric Company filed an errata to its July 13, 2007 compliance filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24100 Filed 12–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–6–000]

Houston Pipe Line Company LP; Notice of Petition for Rate Approval

December 5, 2007.

Take notice that on November 29, 2007, Houston Pipe Line Company LP (HPL) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. HPL requests that the Commission approve market-based rates for firm and interruptible storage services provided at its Bammel Storage Facility, Houston, Texas commencing November 28, 2007.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. December 17, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24101 Filed 12–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–4348–001]

Lochner, Jr., Philip R.; Notice of Filing

December 5, 2007.

Take notice that on December 5, 2007, Philip R. Lochner, Jr. filed a notice of change, resigning from his interlocking directorate position, pursuant to 18 CFR. 45.5(b).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24102 Filed 12–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–405–000]

Texas Gas Transmission, LLC; Notice of Filing

December 6, 2007.

Take notice that on December 4, 2007, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, filed a supplement to amend its application originally filed June 25, 2007. Texas Gas requests authority to increase the proposed storage capacity from 2 Bcf to 5.31 Bcf, in the event that the Commission does not authorize Texas Gas to charge market based rates for the new capacity of 8.25 Bcf as proposed in the original

application. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Since filing its original application, Texas Gas has entered into a second Precedent Agreement for additional 3.05 Bcf of firm storage service for a 10-year term at a fixed negotiated rate. Texas Gas requests authority to construct the additional facilities required to create the approximately 5.31 Bcf of new storage capacity as followed:

—Construct approximately 11 miles of 30-inch mainline pipeline loop from the Midland 3 Compressor Station to a point near Hanson, Kentucky;
—Construct a 2,900 foot extension of the E–9 storage lateral at Midland;
—Drill seven horizontal injection/withdrawal wells and related facilities at Midland;
—Install one 5,488 HP gas turbine and related facilities at the Midland 3 Compressor Station;
—Abandon in-place two existing 2,000 HP compressor units, including appurtenant facilities, at the Midland 3 Compressor Station.

Texas Gas proposes the service date of November 1, 2008 for the 5.31 Bcf-expansion.

Any questions regarding the application are to be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky, 42301.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24091 Filed 12–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–17–000]

Connecticut Municipal Electric Energy Cooperative, Richard Blumenthal, Attorney General for the State of Connecticut, Complainants, v. Milford Power Company, LLC, ISO New England Inc., Respondents; Notice of Complaint

December 6, 2007.

Take notice that on December 4, 2007, Connecticut Municipal Electric Energy Cooperative and Richard Blumenthal, Attorney General for the State of Connecticut (collectively, CMEEC/CTAG) filed a formal complaint against Milford Power Company, LLC (Milford) and ISO New England Inc. (ISO) pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824(e), 825(e), and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206, alleging that Milford was no longer eligible to receive a Reliability Must Rule (RMR) agreement, and that the RMR agreement between Milford and the ISO should be terminated immediately. CMEEC/CTAG seek consideration of the Complaint in accordance with the Commission's Fast Track procedures.

CMEEC/CTAG certify that copies of the complaint were served on the contacts for Milford and ISO, as well as on persons designated on the official service list in *Milford Power Company, LLC,* Docket No. ER05–163–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24090 Filed 12–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Technical Conference

December 6, 2007.

Interconnection Queuing Practices (Docket No. AD08–2–000); Midwest Independent Transmission System Operator, Inc. (Docket No. ER07–1375–000); Midwest Independent Transmission System Operator, Inc. (Docket No. ER07–970–000); Southwest Power Pool (Docket No. ER07–1311–000); PacifiCorp (Docket No. OA07–54–000); United States Department of Energy Bonneville Power Administration (Docket No. NJ08–2–000); PJM Interconnection, L.L.C. (Docket No. ER08–280–000); California Independent System Operator Corporation (Docket No. ER08–140–000)

As announced in the Notice of Technical Conference issued on November 2, 2007 and the Second Notice of Technical Conference issued on November 30, 2007,[1] a technical conference will be held on Tuesday, December 11, 2007 from 9:30 a.m. to approximately 4:30 p.m. (EST), in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commissioners will be attending this conference.

Additional docket numbers have been included in the caption above because issues in these proceedings may be related to issues arising during the course of discussions in the technical conference.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24092 Filed 12–12–07; 8:45 am]

BILLING CODE 6717–01–P

[1] We note that the Second Notice of Technical Conference issued on November 30, 2007 changed the conference times from the initial notice.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0265; FRL–8505–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; PM 2.5 National Ambient Air Quality Standard Implementation Rule; EPA ICR No. 2258.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0265, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Butch Stackhouse, Air Quality Policy Division, Office of Air Quality Planning and Standards, Mail Code C539–01, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5208, facsimile number (919) 541–0824, electronic mail e-mail address: *stackhouse.butch@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 25, 2007 (72 FR 20668), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0265, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: PM 2.5 National Ambient Air Quality Standard Implementation Rule

ICR numbers: EPA ICR No. 2258.01, OMB Control No. 2060–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Paperwork Reduction Act requires the information found in this ICR to assess the burden of the PM 2.5 National Ambient Air Quality Standard Implementation (NAAQS) Rule as well as the periodic reporting and record keeping necessary to maintain the rule. The rule was proposed November 1, 2005 (70 *FR* 65983) and promulgated April 25, 2007 (72 *FR* 20585). The preamble to the proposed and final regulation addressed

the administrative burden in general terms. The preamble to the final rule stated that an ICR would be prepared. The rule includes requirements that involve collecting information from States with areas that have been designated nonattainment for the PM 2.5 NAAQS.

The time period covered in this ICR is a three year period from April 5, 2008 through April 4, 2011. The milestones for the State or local air agency respondents will include the required SIP elements prescribed in CAA sections 110 and part D, subpart 1 of title I for Implementation plans and the requirements in the PM 2.5 NAAQS Implementation Rule (40 CFR 51.1000–51.1012). The PM2.5 SIP will contain rules and other requirements designed to achieve the NAAQS by the deadlines established under the CAA, and it also contains a demonstration that the State's requirements will in fact result in attainment. The SIP must meet the requirements in subpart 1 to adopt Reasonable Available Control Measures (RACM) and Reasonable Available Control Technology (RACT), and provide for Reasonable Further Progress (RFP) toward attainment for the period prior to the area's attainment date. However, not all of the milestones and associated burden and administrative cost estimates apply to every designated PM 2.5 nonattainment area. Areas with cleaner air quality have fewer requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10,000 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments.

Estimated Number of Respondents: 21.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 210,000.

Estimated Total Annual Cost: $11.8 million, which includes no annualized capital or O&M costs.

Changes in the Estimates: This is a new collection based on the EPA revision to the NAAQS for particulate matter on July 18, 1997, to add new standards for fine particles, using PM2.5 as the indicator. The 21 States will submit implementation plans to EPA for each nonattainment area that will need to include a number of elements, including an evaluation of reasonably available control technology (RACT) and reasonably available control measures (RACM), an attainment demonstration showing how the area will attain the standards as expeditiously as practicable, and a plan showing that the area will make reasonable further progress (RFP) from the date the area's SIP is due to its attainment date.

Dated: December 6, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24156 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0049; FRL–8505–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Hospital/Medical/Infectious Waste Incinerators (Renewal); EPA ICR Number 1730.06, OMB Control Number 2060–0363

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0049, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 9, 2007 (72 *FR* 10735), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2007–0049, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is

restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Hospital/Medical/ Infectious Waste Incinerators (40 CFR part 60, subpart Ec).

ICR Numbers: EPA ICR Number 1730.06, OMB Control Number 2060–0363.

ICR Status: This ICR is scheduled to expire on December 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Hospital/Medical/ Infectious Waste Incinerators (HMIWI), 40 CFR part 60, subpart Ec, were promulgated on September 15, 1997. These standards apply to HMIWIs for which construction commenced after June 20, 1996, or for which modification commenced after the effective date of the NSPS. Notification reports are required upon the construction, reconstruction, or modification of an HMIWI. Also, required are one-time-only reports of initial performance test data and continuous measurements of site-specific operating parameters. Annual compliance reports are required on a variety of site-specific operating parameters, including exceedance of applicable limits. Semiannual compliance reports of emission rates or operating parameter data that were not obtained when exceedances of applicable limits occurred. Affected entities must retain reports and records for two years under 40 CFR part 60, subpart Ec and 40 CFR part 60, subpart A—General Provisions.

Co-fired combustors and incinerators burning only pathological, low-level radioactive, and/or chemotherapeutic waste are required to submit notification reports of an exemption claim, and an estimate of the relative amounts of waste and fuels to be combusted. These co-fired combustors and incinerators are also required to maintain records on a calendar quarter basis, of the weight of hospital waste combusted, the weight of medical/infectious waste combusted, and the weight of all other fuels and waste combusted.

All reports required under NSPS and the General Provisions are submitted to the respondent's state, tribal, or a local agency, whichever has been delegated enforcement authority by the EPA. The information is used by the EPA solely to determine that all sources subject to the NSPS are in compliance, and that the control system installed to comply with the standards is being properly operated and maintained. Based on reported information, EPA can decide which facilities should be inspected and what records or processes should be inspected at the facilities. The records that the owner/operators maintain would indicate to EPA whether facility personnel are operating and maintaining control equipment properly. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notification, reports, and records are essential in determining compliance and are required of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart Ec, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 195 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities burning hospital waste and/or medical infectious waste.

Estimated Number of Respondents: 9.

Frequency of Response: Initially, annually and semiannually.

Estimated Total Annual Hour Burden: 6,617.

Estimated Total Annual Cost: $683,312, which includes $2,000 annualized Capital Startup costs, $25,000 annualized Operating and Maintenance (O&M) costs, and $656,312 annualized Labor costs.

Changes in the Estimates: There is an increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens; however, there have been no program changes.

The industry is experiencing some growth; therefore, there is an increase in the number of new sources. In addition, the revised hourly rate has been updated (increased) and calculation errors in the previous ICR were corrected.

There is also an increase in the capital/startup and operations and maintenance (O&M) cost which is due to the increase in the number of new sources.

Dated: December 6, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24158 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0077; FRL–8505–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Significant New Alternatives Policy (SNAP) Program (Renewal), EPA ICR Number 1596.07, OMB Control Number 2060–0226

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR, which is abstracted below, describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2008.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OAR–2004–0077, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Monica Shimamura, Stratospheric Protection Division, Alternatives and Emission Reductions Branch, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9337; fax number: (202) 343–2362; e-mail address: *shimamura.monica@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 11, 2007 (72 FR 32095), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0077, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Significant New Alternatives Policy (SNAP) Program (40 CFR part 82, subpart G) (Renewal).

ICR numbers: EPA ICR Number 1596.07, OMB Control Number 2060–0226.

ICR status: This ICR is scheduled to expire on December 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, identifies acceptable substitutes. Responses to the collection of information are mandatory under section 612 for anyone who sells, or in certain cases, uses substitutes for an ozone-depleting substance after April 18, 1994, the effective date of the final rule. Under CAA section 114(c), emissions information may not be claimed as confidential.

To develop the lists of acceptable and unacceptable substitutes, the Agency must assess and compare ''overall risks to human health and the environment'' posed by use of substitutes in the context of particular applications. EPA requires submission of information covering a wide range of health and environmental factors. These include intrinsic properties such as physical and chemical information, ozone depleting potential, global warming potential, toxicity and flammability, and use-specific data such as substitute applications, process description, environmental release data, environmental fate and transport and cost information. Once a completed submission has been received, a 90-day review period under the SNAP program will commence. Any substitute which is a new chemical must also be submitted to the Agency under the Premanufacture Notice program under the Toxic Substances Control Act (TSCA). Alternatives that will be used in pesticide formulations must be filed jointly with EPA's Office of Pesticide Programs and with SNAP.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and

disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, importers, formulators and processors of substitutes for ozone depleting substances.

Estimated Number of Respondents: 268.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 8,204 hours.

Estimated Total Annual Costs: $511,430. This includes an estimated $492,252 in labor costs, $18,918 in capital costs and $260 in O&M costs.

Changes in Estimates: The total number of burden hours requested for this information collection has decreased from 8,927 to 8,204. The SNAP burden hours have been decreasing since 2000 from 10,363 to 8,927 to 8,204 hours. The reason for this change in burden is the smaller number of respondents keeping records for alternatives that are subject to more narrowed use limits than three years ago because of the development of new substitutes. For example, users of some restricted fire suppressants now have other options available with no restriction, and thus no paperwork requirement. In addition, a smaller number of SNAP petitions are being filed than EPA estimated three years ago. The recordkeeping estimates remain the same.

Dated: December 6, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24159 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–UST–2007–0494, FRL–8505–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Renewal); EPA ICR No. 1360.08, OMB Control No. 2050–0068

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–UST–2007–0494, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Underground Storage Tank (UST) Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hal White, Office of Underground Storage Tanks, Mail Code 5403P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–7177; fax number: (703) 603–0175; e-mail address: *white.hal@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 25, 2007 (72 FR 40852), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–UST–2007–0494, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the UST Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the UST Docket is 202–566–0270.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Renewal).

ICR numbers: EPA ICR No. 1360.08, OMB Control No. 2050–0068.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for UST systems, as may be necessary, to protect human health and the environment, and procedures for approving state programs in lieu of the federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR part 280, and state program approval procedures at 40 CFR part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR parts 280 and 281.

The data collected for new and existing UST system operations and financial requirements are used by owners and operators and/or EPA or the implementing agency to monitor results of testing, inspections, and operation of UST systems, as well as to demonstrate compliance with regulations. EPA

believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that UST systems are being managed in a manner protective of human health and the environment. The response to this information collection for industry is mandatory under 40 CFR part 280.

EPA uses state program applications to determine whether to approve a state program. Before granting approval, EPA must determine that programs will be no less stringent than the federal program and contain adequate enforcement mechanisms. States must respond to this information collection in order to obtain or maintain state program approval under 40 CFR part 281.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the requirements covered in this ICR. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: UST facilities and states.

Estimated Number of Respondents: 237,578.

Frequency of Response: Once, on occasion.

Estimated Total Annual Hour Burden: 5,969,217.

Estimated Total Annual Cost: $743,453,178 ($453,047,585 in labor costs; $95,975,266 in annualized capital/startup costs; and $194,430,327 in operation and maintenance costs).

Changes in the Estimates: There is a decrease of 163,020 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to updated data on the respondent universe which show a lower number of affected facilities than previously estimated.

Dated: December 6, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24160 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0050; FRL–8606–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Benzene Emissions from Coke By-Product Recovery Plants (Renewal); EPA ICR Number 1080.12, OMB Control Number 2060–0185

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0050, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 9, 2007 (72 FR 10735), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2007–0050, which is available for public viewing online at *http://www.regulations.gov*, or, in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Benzene Emissions from Coke By-Product Recovery Plants (Renewal).

ICR Numbers: EPA ICR Number 1080.12, OMB Control Number 2060–0185.

ICR Status: This ICR is scheduled to expire on December 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the

collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) were promulgated on December 15, 1989, and amended on February 12, 1999, and October 17, 2000. Owners or operators of existing and new facilities that are furnace or foundry coke by-product recovery plants that produce benzene emissions subject to NESHAP subpart L must submit notification of and application for construction, reconstruction or modification, and notice of the anticipated date of initial and actual startup. Owners and operators of regulated facilities must also submit: notifications of performance tests; any physical or operational change which may increase the emission rate; implementation of equipment leakage requirements; and notification that the requirements of 40 CFR part 61, subpart L, 40 CFR part 61, subpart V, and 40 CFR part 61, subpart A, have been met. In addition, these owners and operators must submit performance test reports and semiannual reports. Records must be maintained of leak detection and repair logs, the design requirements of closed-vent systems and control devices, applicable valve information, design control device, plan operations and corrective action, compliance tests, reference values of monitored parameters, and monitoring results and exceedances. In addition, records must be kept of annual furnace and foundry coke production for furnace coke by-product recovery plants, monitoring data, monitoring system calibration checks, and the occurrence and duration of periods where the monitoring system is malfunctioning or inoperative.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 61, subpart L, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 92 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Benzene emissions from coke by-product recovery plants.

Estimated Number of Respondents: 17.

Frequency of Response: Semiannually, and on occasion.

Estimated Total Annual Hour Burden: 3,137.

Estimated Total Annual Cost: $199,375, which includes $0 annualized Capital Startup costs, $0 Operating and Maintenance Costs (O&M), and $199,375 annualized Labor Costs.

Changes in the Estimates: The regulations have not changed over the past three years and are not anticipated to change over the next three years. There is only one small change in the labor hours in this ICR compared to the previous ICR. The change is caused by different methods of rounding numbers. The previous ICR shows (3,138) as the labor hours, however, this ICR uses the exact hours of (3,137). The growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR, and there is no change in burden to industry.

Dated: December 6, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24161 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1081; FRL–8155–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP); EPA ICR No. 2249.01, OMB Control No. 2070–new

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is entitled: ''Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP)'' and identified by EPA ICR No. 2249.01 and OMB Control No. 2070–new. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before February 11, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–1081, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–1081.

The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–1081. EPA's policy is that all comments received will be included in the public 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 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 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 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, 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 OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: William Wooge, Office of Science Coordination and Policy (OSCP) (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8482; e-mail address: *wooge.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Should I Consider when I Prepare My Comments for EPA?

A. Considerations Under the PRA

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. 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.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

B. Tips for Preparing Your Comments

You may find the following suggestions helpful for preparing your 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. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. 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.

C. Submitting CBI

Do not submit CBI 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.

II. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action are those individuals and companies that receive an EDSP test order issued by the Agency. Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(p)(5)(A), EPA ''shall issue'' EDSP test orders ''to a registrant of a substance for which testing is required . . . or to a person who manufactures or imports a substance for which testing is required.'' Using the North American Industrial Classification System (NAICS) codes, the Agency has

determined that potential respondents to this ICR may include, but is not limited to: Chemical manufacturers and processors (NAICS code 325); Pesticide, fertilizer, and other agricultural chemical manufacturing (NAICS code 3253); Producers and formulators of pesticide products (NAICS code 32532); Producers of antifouling paints (NAICS code 32551); Producers of antimicrobial pesticides (NAICS code 32561); Producers of nitrogen stabilizers (NAICS code 32531); and Producers of wood preservatives (NAICS code 32519).

Title: Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP).

ICR numbers: EPA ICR No. 2249.01, OMB Control No. 2070–new.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control number for this ICR will be displayed by publication in the **Federal Register** and by inclusion of a Paperwork Reduction notice on the related collection instrument, i.e., test order and/or form.

Abstract: This new ICR covers the information collection activities associated with Tier 1 screening of the first group of chemicals under the EDSP. The EDSP is established under section 408(p) of the FFDCA, which requires endocrine screening of all pesticide chemicals and was established in response to growing scientific evidence that humans, domestic animals, and fish and wildlife species have exhibited adverse health consequences from exposure to environmental chemicals that interact with their endocrine systems.

The EDSP, which was established in 1998, consists of a two-tiered approach to screen all pesticide chemicals for potential endocrine disrupting effects. The purpose of Tier 1 screening (referred to as ''screening'') is to identify substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems using a battery of assays. The purpose of Tier 2 testing (referred to as ''testing''), therefore, is to identify and establish a dose-response relationship for any adverse effects that might result from the interactions identified through the Tier 1 assays. Additional information about the EDSP is available through the Agency's web site at *http://www.epa.gov/scipoly/oscpendo/index.htm*.

EPA is currently implementing the EDSP in three major parts that are being developed in parallel and with substantial work on each well underway: 1) Assay validation; 2) Priority setting; and 3) Procedures. This ICR is related to the third component of the EDSP, i.e., the procedures for Tier 1 screening. This ICR is not intended to cover all of the activities currently underway for the EDSP. Instead, the focus of this ICR is on the information collection activities associated with the Tier 1 screening of the 73 chemicals identified for initial screening under the EDSP. A separate ICR will be developed to address the information collection activities associated with Tier 2 testing. In addition, subsequent Tier 1 screening of additional chemicals not selected for the initial round will be addressed in a future ICR, either when this ICR is amended in three years or in a separate ICR. In either case, EPA will follow the notice and comment process prescribed by the PRA to first seek public comment on the ICR before submitting it to OMB for review and approval under the PRA.

Burden statement: The annualized public reporting and recordkeeping burden for this collection of information is estimated to average 2,649 hours per response, although individual respondent burden varies based on their individual activities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 445.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: Two responses per chemical: An initial response and the final data submission. All respondents will provide an initial response, while only those that generate the data will complete the final data submission.

Estimated total annual burden hours: 93,655 hours.

Estimated total annual costs: $6,887,418. This includes an estimated annualized cost of $267 for non-burden hour or delivery costs.

III. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. Although included as attachments to the ICR, EPA has issued a separate **Federal Register** document to solicit public review and comments on the related draft policy describing the procedures for responding to the 408(p) order, and the draft template for the 408(p) order itself. In addition to considering comments submitted on the ICR, EPA will also consider comments received on those documents in response to that separate solicitation. Changes to those documents may result in changes to the ICR as well. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. 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**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 29, 2007.

James B. Gulliford,

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

[FR Doc. E7–24163 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8505–5]

Underground Injection Control Program, Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Solutia, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decisions on no migration petition reissuances.

SUMMARY: Notice is hereby given that exemptions to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act have been granted to Solutia, Inc,

Chocolate Bayou Facility (Solutia) for two Class I injection wells located at Alvin, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petitions and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. These final decisions allow the underground injection by Solutia, of the specific restricted hazardous wastes identified in these exemptions, into Class I hazardous waste injection wells Nos. WDW–13 and WDW–318 at the Chocolate Bayou, Alvin, Texas facility, until December 31, 2020, unless EPA moves to terminate these exemptions under provisions of 40 CFR 148.24. Additional conditions included in these final decisions may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued October 15, 2007. The public comment period closed on November 29, 2007. No comments were received. These decisions constitute final Agency action and there is no Administrative appeal. These decisions may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: These actions are effective as of December 4, 2007.

ADDRESSES: Copies of the petitions and all pertinent information relating thereto are on file at the following location:

Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7150.

Dated: December 4, 2007.

William K. Honker,

Acting Division Director, Water Quality Protection Division (6WQ).

[FR Doc. E7–24173 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8505–3]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent To Grant an Exclusive License.

SUMMARY: Pursuant to 35 U.S.C. 207 (Patents) and 37 CFR part 404 (U.S. Government patent licensing regulations), EPA hereby gives notice of its intent to grant, for a specific field of use, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the U.S. Patent No. 6,821,425, entitled ''Biomass Concentrator Reactor,'' issued November 23, 2004, and all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patent, to Purestream ES, L.L.C. of Walton, Kentucky.

The invention was announced as being available for licensing in the October 11, 2007 issue of the **Federal Register** (72 FR 57937). The proposed exclusive license will contain appropriate terms, limitations, and conditions to be negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and § 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 15 days from the date of this notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patents should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Attorney and other EPA officials will review all written responses and then make recommendations on a final decision to the Director or Deputy Director of the National Risk Management Research Laboratory, who have been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments on this notice must be received by EPA at the address listed below by December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Dated: December 7, 2007.

Geoffrey Cooper,

Acting Associate General Counsel, General Law Office.

[FR Doc. 07–6043 Filed 12–12–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1080; FRL–8340–3]

RIN [2070–AD61]

Endocrine Disruptor Screening Program (EDSP); Draft Policies and Procedures for Initial Screening; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the availability of and solicits public comment on EPA's draft policies and procedures for initial screening under the Agency's Endocrine Disruptor Screening Program (EDSP). The EDSP is established under section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which requires endocrine screening of all pesticide chemicals and was established in response to growing scientific evidence that humans, domestic animals, and fish and wildlife species have exhibited adverse health consequences from exposure to environmental chemicals that interact with their endocrine systems. This document provides specific details on the policies and the related procedures that EPA is considering adopting for initial screening under the EDSP. In general, the Agency has tried to develop policies that could be used in subsequent data collection efforts. However, EPA expects that these policies may be modified as a result of the Agency's experience applying them to the first chemicals to undergo testing. This document also discusses the statutory requirements associated with and format of the test orders, as well as EPA's procedures for fair and equitable sharing of test costs and data confidentiality. EPA will also be holding a public meeting to discuss these policies and procedures. A separate **Federal Register** document announced the details of the public meeting.

DATES: Comments must be received on or before February 11, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–1080, by one of the following methods:

- *Federal e-Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–1080. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–1080. EPA's policy is that all comments received will be included in the 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 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 email 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. 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 docket index available at *http://www.regulations.gov*. 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, 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 OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: William Wooge, Office of Science Coordination and Policy (OSCP), Mailcode 7201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8482; e-mail address: *wooge.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you produce, manufacture, use, or import pesticide/agricultural chemicals and other chemical substances; or if you are or may otherwise be involved in the testing of chemical substances for potential endocrine effects. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(p)). Potentially affected entities and others may use the North American Industrial Classification System (NAICS) codes to assist in determining whether this action might apply an entity. Potentially affected entities may include, but are not limited to:

• Chemical manufacturers, importers and processors (NAICS code 325), e.g., persons who manufacture, import or process chemical substances.

• Pesticide, fertilizer, and other agricultural chemical manufacturing (NAICS code 3253), e.g., persons who manufacture, import or process pesticide, fertilizer and agricultural chemicals.

• Scientific research and development services (NAICS code 5417), e.g., persons who conduct testing of chemical substances for endocrine effects.

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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IV.E. of this document, and examine section 408(p) of the FFDCA. 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 CBI 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:

a. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree and suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Access Information about the EDSP?

In addition to accessing the public docket for this document through *www.regulations.gov*, you can access other information about the EDSP through the Agency's website at *http://www.epa.gov/scipoly/oscpendo/index.htm*.

II. Overview

A. What Action is the Agency Taking?

The Agency is announcing the availability of and seeking public comment on the draft policies and procedures that it is considering to issue test orders pursuant to the authority provided by section 408(p)(5) of FFDCA. This document provides specific details on the requirements associated with section 408(p) of FFDCA, format of FFDCA section 408(p) test orders, and procedures. This document also describes the actions and/or procedures that EPA is considering to:

- Minimize duplicative testing (see Unit IV.C.).
- Promote fair and equitable sharing of test costs (see Unit IV.C.).
- Address issues surrounding data compensation (see Unit IV.C.) and confidentiality (see Unit IV.D.).
- Determine to whom orders will be issued (see Unit IV.E.).
- Identify how order recipients should respond to FFDCA section 408(p) test orders, including procedures for challenging the orders (see Unit IV.F. and H.).
- Ensure compliance with FFDCA section 408(p) test orders (see Unit IV.G.).

EPA has also developed a template for the test order and an information collection request (ICR) to obtain the necessary clearances under the Paperwork Reduction Act (PRA). The templates for the test orders and the draft ICR are available in the docket associated with this **Federal Register** Notice. In addition, through a separate **Federal Register** document, EPA is seeking public comment on the draft ICR and draft templates.

In addition, EPA will be holding a public meeting to discuss these draft policies and procedures. In the **Federal Register** of November 23, 2007 (72 FR 65732) (FRL–8341–3), EPA announced the details of the public meeting, which is posted on the EDSP website at*www.epa.gov/scipoly/oscpendo/meetings/mtg_121707.htm*.

This document is intended to describe the administrative policies and procedures that EPA is considering adopting as part of the Endocrine Disruptor Screening Program (EDSP). The policies and procedures presented in this document are not intended to be binding on either EPA or any outside parties, and EPA may depart from the policies and procedures presented in this document where circumstances warrant and without prior notice. The policies and procedures presented in this document may eventually be incorporated into an order issued pursuant to section 408(p) of FFDCA.

This document only addresses the procedural framework applicable to EPA's implementation of FFDCA section 408(p)(5), and it does not address the tests or assays that are under development for use under the EDSP or the approach for selecting chemicals under the EDSP. In a September 27, 2005, **Federal Register** Notice (70 FR 56449) (FRL–7716–9), the Agency announced the approach that was used to identify chemicals for initial screening under EDSP. The draft list of 73 chemicals to undergo initial screening was published in a June 18, 2007 **Federal Register** Notice (72 FR 33486) (FRL–8129–3). In a separate public process, the Agency is coordinating the scientific validation and peer review of the assays, which includes the development of protocols for the assays. Additional information about all aspects of the EDSP, including current status of these related parallel activities, is available at *http://www.epa.gov/scipoly/oscpendo/pubs/edspoverview/index.htm*.

B. What is the Endocrine Disruptor Screening Program (EDSP)?

The EDSP was established in 1998 to carry out the mandate in section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA) [21 U.S.C. 346a*et. seq.*], which directed EPA ''to develop a screening program . . . to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.'' If a substance is found to have an effect, FFDCA section 408(p)(6) directs the Administrator to take action under available statutory authority to ensure protection of public health. That is, the ultimate purpose of the EDSP is to provide information to the Agency that will allow the Agency to evaluate the risks associated with the use of a chemical and take appropriate steps to mitigate any risks (Ref. 1). The necessary information includes identifying any adverse effects that might result from the interaction of a substance with the endocrine system and establishing a dose-response curve (Ref. 1). Section 1457 of the Safe Drinking Water Act (SDWA) also authorizes EPA to screen substances that may be found in sources of drinking water, and to which a substantial population may be exposed, for endocrine disruption potential. [42 U.S.C. 300j–17].

The Agency first proposed the basic components of the EDSP on August 11, 1998 (63 FR 42852) (FRL–6021–3). After public comments, external consultations and peer review, EPA provided additional details on December 28, 1998 (63 FR 71542) (FRL–6052–9). The design of the EDSP was based on the recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), which was chartered under the Federal Advisory Committee Act (FACA) [5 U.S.C. App.2, 9(c)]. The EDSTAC was comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies, worker protection and labor organizations, environmental and public health groups, and research scientists.

EDSTAC recommended that EPA's program address both potential human and ecological effects; examine effects on estrogen, androgen, and thyroid hormone-related processes; and include non-pesticide chemicals, contaminants, and mixtures in addition to pesticides (Ref. 1). Based on these recommendations, EPA developed a two-tiered approach, referred to as the EDSP. The purpose of Tier 1 screening (referred to as ''screening'') is to identify substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems using a battery of assays. The fact that a substance may interact with a hormone system, however, does not mean that when the substance is used, it will cause adverse effects in humans or ecological systems. The purpose of Tier 2 testing (referred to as ''testing''), therefore, is to identify and establish a dose-response relationship for any adverse effects that might result from the interactions identified through the Tier 1 assays (Ref. 1). In addition, because of the large number of chemicals that might be included in the program, EDSTAC also recommended that EPA establish a priority-setting approach for choosing chemicals to undergo Tier 1 screening. The Science Advisory Board (SAB)/Scientific Advisory Panel (SAP) Subcommittee further recommended that initial screening be limited to 50 to 100 chemicals.

EPA currently is implementing its EDSP in three major parts that are being

developed in parallel, with substantial work on each well underway. This document deals only with the third component of the EDSP (i.e., policies and procedures related to the issuance of orders). The other aspects of the EDSP have been or will be addressed in separate documents published in the **Federal Register**. The three parts are briefly summarized as follows:

1. *Assay validation*. Under FFDCA section 408(p), EPA is required to use ''appropriate validated test systems and other scientifically relevant information'' to determine whether substances may have estrogenic effects in humans. EPA is validating assays that are candidates for inclusion in the Tier 1 screening battery and Tier 2 tests, and will select the appropriate screening assays for the Tier 1 battery based on the validation data. Validation is defined as the process by which the reliability and relevance of test methods are evaluated for the purpose of supporting a specific use (Ref. 2). The status of each assay can be viewed on the EDSP website in the Assay Status table: *http://www.epa.gov/scipoly/oscpendo/pubs/assayvalidation/status.htm*. In addition, on July 13, 2007, EPA published a **Federal Register** document that outlined the approach EPA intends to take for conducting the peer reviews of the Tier 1 screening assays and Tier 2 testing assays and EPA's approach for conducting the peer review of the Tier 1 battery (72 FR 38577) (FRL–8138–4). EPA also announced the availability of a ''list server'' (Listserv) that will allow interested parties to sign up to receive e-mail notifications of EDSP peer review updates, including information on the availability of peer review materials to be posted on the EDSP website.

2. *Priority setting*. EPA described its priority setting approach to select pesticide chemicals for initial screening on September 27, 2005 (70 FR 567449), and announced the draft list of initial pesticide active ingredients and pesticide inerts to be considered for screening under FFDCA on June 18, 2007 (72 FR 33486). The Agency expects to publish a final list of chemicals that will be subject to initial screening before EPA begins issuing orders to require testing in 2008. More information on EPA's priority setting approach and the draft list of chemicals is available at *http://www.epa.gov/scipoly/oscpendo/pubs/prioritysetting*. The first group of pesticide chemicals to undergo screening is also referred to as ''initial screening'' in this document.

3. *Procedures*. The procedures are addressed by this document, which describes EPA's policies relating to:

- Procedures that EPA would use to issue orders.
- How joint data development, cost sharing, data compensation, and data protection would be addressed.
- Procedures that order recipients would use to respond to an order.
- Other related procedures or policies.

C. What Chemicals May Be Covered by the EDSP?

FFDCA section 408(p)(3) specifically requires that EPA ''shall provide for the testing of all pesticide chemicals.'' Section 201 of FFDCA defines ''pesticide chemical'' as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including all active and inert ingredients of such pesticide.'' [FFDCA section 201(q)(1), 21 U.S.C. 231(q)(1)]. Active ingredients are the substances that suppress, control or kill the target pests. Inert ingredients generally have no direct effect on the target pests although they may have some degree of toxicity. Inert ingredients may simply dilute the active ingredient or they may perform some function such as allowing the product to adhere better to leaves or other surfaces to improve contact with the pests. Inert ingredients also include fragrances, which may mask the smell of residential pesticides, and odorizers, which may act as warning agents. Many of these chemicals, including both active and inert ingredients, also have other, non-pesticidal uses.

FFDCA also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' [21 U.S.C. 346a(p)(3)].

In addition, EPA may provide for the testing of ''any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.'' [SDWA 1457, 42 U.S.C. 300j–17].

Lastly, it is important to clarify that the procedures and policies described in this document do not in any way limit the Agency's use of other authorities or procedures to require testing of chemicals for endocrine disruptor effects. For example, section 4 of the Toxic Substances Control Act (TSCA) provides EPA with the authority to require testing of TSCA chemical substances, provided that the Agency makes certain risk and/or exposure findings. [15 U.S.C. 2603]. Similarly, section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) grants EPA the authority to require pesticide registrants to submit additional data that EPA determines are necessary to maintain an existing registration. [7 U.S.C. 346a(c)(2)(B)].

As discussed in EPA's priority setting approach for the EDSP (70 FR 56449, September 27, 2005), the Agency is initially focusing its chemical selection on pesticide chemicals, both active ingredients and high production volume chemicals used as an inert ingredient in pesticides. If chemicals identified for future screening and testing under the EDSP are not used in pesticides, the Agency will consider whether the policies and procedures identified in this document and used for pesticide chemicals would be appropriate for other categories of substances.

D. How Will EDSP Data be Used?

In general, EPA will use data collected under the EDSP, along with other information, to determine if a pesticide chemical, or other substance that may be found in sources of drinking water, may pose a risk to human health or the environment due to disruption of the endocrine system. Under the tiered approach, Tier 1 screening data will be used to identify substances that have the potential to interact with the endocrine system. Chemicals that go through Tier 1 screening and are found to exhibit the potential to interact with the estrogen, androgen, or thyroid hormone systems will proceed to Tier 2 for testing. Tier 2 testing data will identify any adverse endocrine-related effects caused by the substance, and establish a quantitative relationship between the dose and that adverse effect. As the EDSP screening and testing requirements mature into routine evaluations, the Agency intends to utilize the pesticide registration review process as the framework for managing its responsibilities regarding the endocrine screening of pesticides, and intends to eventually incorporate these requirements into the pesticide registration review process. At that point, EPA will regard the endocrine disruptor screening and testing required under FFDCA as part of the risk characterization of the pesticide that is intrinsic to the FIFRA decision. While EPA has discretionary authority to issue, at any time, testing orders requiring manufacturers to conduct Tier 1 assays, the Agency plans to assess the performance of the Tier 1 battery based on the test data received for the initial list of chemicals before beginning to routinely issue orders to test additional chemicals. If EDSP data exist at the time of a pesticide's registration review, the

Agency will consider the data when it makes its FIFRA (3)(c)(5) finding under registration review.

III. Authority

A. What is the Statutory Authority for the Policies Discussed in this Document?

FFDCA section 408(p)(1) requires EPA ''to develop a screening program, using appropriate validated test systems and other scientifically relevant information to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effects as [EPA] may designate.'' [21 U.S.C. 346a(p)].

FFDCA section 408(p)(3) expressly requires that EPA ''shall provide for the testing of all pesticide chemicals.'' FFDCA section 201 defines ''pesticide chemical'' as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including all active and inert ingredients of such pesticide.'' [FFDCA section 201(q)(1), 21 U.S.C. 231(q)(1)]. The statute also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' [21 U.S.C. 346a(p)(3)].

FFDCA section 408(p)(5)(A) provides that the Administrator ''shall issue an order to a registrant of a substance for which testing is required [under FFDCA section 408(p)], or to a person who manufactures or imports a substance for which testing is required [under FFDCA section 408(p)], to conduct testing in accordance with the screening program, and submit information obtained from the testing to the Administrator within a reasonable time period'' that the Agency determines is sufficient for the generation of the information.

FFDCA section 408(p)(5)(B) requires that, ''to the extent practicable, the Administrator shall minimize duplicative testing of the same substance for the same endocrine effect, develop, as appropriate, procedures for fair and equitable sharing of test costs, and develop, as necessary, procedures for handling of confidential business information. . . .'' [21 U.S.C. 346a (p)(5)(B)].

If a registrant fails to comply with a FFDCA section 408(p)(5) test order, the Administrator is required to issue ''a notice of intent to suspend the sale or distribution of the substance by the registrant. Any suspension proposed under this paragraph shall become final at the end of the 30–day period beginning on the date that the registrant receives the notice of intent to suspend, unless during that period, a person adversely affected by the notice requests a hearing or the Administrator determines that the registrant has complied fully with this paragraph.'' [21 U.S.C. 346a (p)(5)(C)]. Any hearing is required to be conducted in accordance with section 554 of the Administrative Procedures Act (APA). [5 U.S.C. 554]. FFDCA section 408(p) explicitly provides that ''the only matter for resolution at the hearing shall be whether the registrant has failed to comply with a test order under subparagraph (A) of this paragraph.'' [21 U.S.C. 346a (p)(5)(C)(ii)]. A decision by the Administrator after completion of a hearing is considered to be a final Agency action. [21 U.S.C. 346a (p)(5)(C)(ii)]. The Administrator shall terminate a suspension issued with respect to a registrant if the Administrator determines that the registrant has complied fully with FFDCA section 408(p)(5). [21 U.S.C. 346a (p)(5)(C)(iii)].

FFDCA section 408(p)(5)(D) provides that any person (other than a registrant) who fails to comply with a FFDCA section 408(p)(5) test order shall be liable for the same penalties and sanctions as are provided under section 16 of the Toxic Substances Control Act (TSCA) [15 U.S.C. 2615] in the case of a violation referred to in that section. [21 U.S.C. 346a (p)(5)(D)]. Such penalties and sanctions shall be assessed and imposed in the same manner as provided in TSCA section 16. Under section 16 of TSCA, civil penalties of up to $25,000 per day may be assessed, after notice and an administrative hearing held on the record in accordance with section 554 of the APA. [15 U.S.C. 2615(a)(1)–(2)(A)].

B. Other Statutory Authorities Relevant to this Notice

A number of other statutory provisions are discussed in this document, and consequently, are described below. This document does not affect the existing policies or related procedures that have been established under these other provisions. The following is a brief summary of these other relevant authorities.

1. *FIFRA.* FIFRA section 3(c)(1)(F) provides certain protections for people who submit data to EPA in connection with decisions under EPA's pesticide regulatory program. Specifically, FIFRA section 3(c)(1)(F) confers ''exclusive use'' or ''data compensation'' rights on certain persons (''original data submitters'') who submit data (in which they have an ownership interest), in support of an application for registration, reregistration, or experimental use permit, or to maintain an existing registration. Applicants, who cite qualifying data previously submitted to the Agency by the original data submitter, must certify that the submitter has been granted permission to cite data or that an offer of compensation has been made to the original data submitter. In the case of ''exclusive use'' data, the applicant must obtain the permission of the original data submitter and certify to the Agency that the applicant has obtained written authorization from the original data submitter. (Data are entitled to ''exclusive use'' for 10 years after the date of the initial registration of a pesticide product containing a new active ingredient.) If data are not subject to exclusive use but are compensable, an applicant may cite the data without the permission of the original data submitter, so long as the applicant offers to pay compensation for the right to rely on the data. (Data are ''compensable'' for 15 years after the date on which the data were originally submitted.) If an applicant and an original data submitter cannot agree on the appropriate amount of compensation, either may initiate binding arbitration to reach a determination. If an applicant fails to comply with either the statutory requirements or the provisions of a compensation agreement or an arbitration decision, the application or registration is subject to denial or cancellation. [See also 7 U.S.C. 136a (c)(1)(F)(ii)–(iii)].

FIFRA section 3(c)(2)(B) provides that:

> . . .[i]f the Administrator determines that additional data are required to maintain in effect an existing registration of a pesticide, the Administrator shall notify all existing registrants of the pesticide to which the determination relates and provide a list of such registrants to any interested person.'' [7 U.S.C. 136a(c)(2)(B)]. Continued registration of a pesticide requires that its use not result in ''unreasonable adverse effects on the environment'' (defined as ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental cost and benefits of the use of any pesticide, or a human dietary risk from residues that results from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the [FFDCA].

FIFRA section 3(c)(2)(B) explicitly directs EPA to send notices of data requirements (referred to as ''Data Call-In notices'' or ''DCI notices'') to all registrants affected by the data requirement. It also contains a

mechanism by which recipients of DCI notices may jointly develop data and provides that ''[a]ny registrant who offers to share in the cost of producing the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.'' The section establishes procedures to allow registrants who received DCI notices to use binding arbitration to resolve disputes about each person's fair share of the testing costs.

Further, FIFRA section 3(c)(1)(F) makes clear that data submitted under FIFRA section 3(c)(2)(B) are also ''compensable'' when cited in support of an application for a registration. In other words, a pesticide company that chooses to rely on such data rather than develop its own data must offer compensation to the data generator if the data are relevant to the company's product and the company applies to register its product after the required data have been submitted to EPA. Lastly, the Agency may suspend the registration of a pesticide if the registrant fails to provide data required under a DCI notice in a timely manner.

Finally, FIFRA section 3(c)(2)(D) contains a provision, referred to as the ''formulator's exemption'' that is intended to simplify and promote equity in the implementation of the data compensation program under FIFRA section 3(c)(1)(F). The generic data exemption, in effect, relieves an applicant of the obligation to cite and obtain permission or offer to pay data compensation to cite the results of any study if the study is relevant to the safety assessment of a registered product that the applicant buys from another person and uses to make the applicant's product. Congress' rationale for this exemption is that the seller will recover any data generation costs associated with its product by charging buyers a higher purchase price. Thus, if a pesticide formulator applies to register a product containing an active ingredient that the formulator purchased from the basic manufacturer of the active ingredient, the formulator does not need to submit or cite and offer to pay compensation for any data specifically relevant to the purchased product. The Agency has extended the generic data exemption to data requirements under FIFRA section 3(c)(2)(B). Consequently, if the formulator received a DCI notice requiring data on the active ingredient, the formulator could comply by providing documentation that it bought the active ingredient from another registrant.

2. *SDWA*. SDWA section 1457 provides EPA with discretionary authority to provide for testing, under the FFDCA section 408(p) screening program, ''of any other substances that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.'' [42 U.S.C. 300j–17]. Because SDWA section 1457 specifically mandates that EPA ''may provide for testing. . . in accordance with the provisions of [FFDCA section 408(p)],'' EPA may rely on many of the procedures discussed in this document to require testing under SDWA section 1457.

3. *Other sections of FFDCA*. FFDCA section 408(f) establishes procedures that the Agency ''shall use'' to require data to support the continuation of a tolerance or exemption that is in effect. The provision identifies three options:

- Issuance of a notice to the person holding a pesticide registration under FIFRA section 3(c)(2)(B) [FFDCA section 408(f)(1)(A)].
- Issuance of a rule under section 4 of TSCA [FFDCA section 408(f)(1)(B)].
- Publication of a notice in the **Federal Register** requiring submission, by certain dates, of a commitment to generate the data ''by one or more interested persons.'' [FFDCA section 408(f)(1)(C)].

Before using the third option, however, EPA must demonstrate why the data ''could not be obtained'' using either of the first two options. FFDCA section 408(f)(1) expressly provides that EPA may use these procedures to ''require data or information pertaining to whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.'' Finally, FFDCA section 408(f)(1)(B) provides that, in the event of failure to comply with a rule under TSCA section 4 or an order under FFDCA section 408(f)(1)(C), EPA may, after notice and opportunity for public comment, modify or revoke any tolerance or exemption to which the data are relevant.

In addition, FFDCA section 408(i) provides that ''[d]ata that are or have been submitted to the Administrator under this section or FFDCA section 409 in support of a tolerance or an exemption from a tolerance shall be entitled to confidential treatment for reasons of business confidentiality and to exclusive use and data compensation to the same extent provided by section 3 and section 10 of [FIFRA].''

IV. Policies and Procedures for the EDSP (Initial Screening)

This Unit describes the policies and procedures that EPA is considering to adopt for the initial screening required under the program referred to above in Unit II.B. In general, the Agency has tried to develop policies that could be used in subsequent data collection efforts, including those under SDWA. However, the Agency expects that these policies may be modified as a result of the Agency's experience applying them to the first chemicals to undergo testing. A diagram that graphically presents the overall process is available in the docket.

A. Background

On December 28, 1998 (63 FR 71542) (Ref. 1), EPA first discussed a number of the more complicated policy issues relating to the implementation of the screening program. These issues included:

- Under what authority EPA would require testing.
- How EPA would approach issues relating to minimizing duplicative testing; sharing of test costs; and appropriate compensation for the use or reliance on data submitted by a company (i.e., data compensation).
- EPA's approach to protecting CBI and trade secrets, and the public release of such information.
- Who would be required to conduct testing, including whether exemptions would be available. (Ref. 1).

In this document, EPA is describing the policies and procedures that it intends to use for the initial EDSP screening of pesticide chemicals. For some of these issues, EPA now has a preferred policy approach; for other issues, EPA has laid out the various considerations for public comment.

EPA is soliciting comment on all of the draft policies announced in this document. Prior to requiring screening and testing under the EDSP, EPA will publish in the **Federal Register** the announcement of the final policies and procedures it will adopt for initial screening. However, EPA anticipates that it may modify the policies and procedures for future EDSP screening efforts based on EPA's experience in applying these policies and procedures during initial screening.

B. How Will EPA Require Testing of Pesticide Chemicals Under the EDSP?

For the initial screening, EPA intends to issue ''test orders'' pursuant to section 408(p)(5) of FFDCA. This is consistent with the December 1998 Notice, where EPA indicated that it intended to rely primarily on FFDCA and SDWA to require testing, and would ''use other testing authorities under FIFRA and TSCA to require the testing of those chemical substances that the FFDCA and SDWA do not cover.'' (Ref.

1). Because EPA is focusing on pesticide chemicals in registered pesticide products for initial screening, there is no need to rely on TSCA or SDWA. However, as discussed in Unit IV.C.–IV.D., in order to address some of the more complex issues surrounding joint data development and the availability of data compensation and data protection, EPA is proposing to issue some orders jointly under the authority of FFDCA section 408(p)(5) and FIFRA section 3(c)(2)(B).

The Agency has drafted basic templates that would be used for such test orders. These templates, which reflect EPA's preferred approaches, differ according to whether the recipients are:

- Pesticide registrants, or
- Manufacturers and importers of inert ingredients.

Finally, the test order templates may differ to accommodate differences in the Agency's procedures for data compensation, and for the minimization of duplicative data. Copies of the current draft test order templates are included in the Docket and the Agency welcomes your comments on the structure and clarity of these documents.

There are some pesticide active and inert ingredients that are not registered in the U.S. but for which there are tolerances on foods imported from other countries. When these chemicals are to be tested in the future, EPA may rely on FFDCA 408(f)(1) to require ''interested persons'' to submit data for the EDSP.

C. What Can EPA Do To Minimize Duplicative Testing and Promote Cost Sharing and Data Compensation Under EDSP?

One of the complex issues discussed in the December 1998 Notice related to joint data development, and how EPA would implement the FFDCA section 408(p)(5)(B) directive that ''[t]o the extent practicable, the Administrator shall minimize duplicative testing of the same substance for the same endocrine effect. . . .'' As noted in the December 1998 Notice (63 FR 71563), EPA also considered it appropriate to promote cost sharing and data compensation. EPA also originally contemplated that it would adopt new procedures unique to the EDSP. After considering all of the issues, EPA is currently considering adopting an approach that is similar to that announced in the December 1998 Notice, but with some significant distinctions which are discussed in more detail in this section.

In summary, EPA's preferred approach to ''minimize duplicative testing of the same substance'' and to promote the ''fair and equitable sharing of test costs'' would be as follows:

- The companies, who are the basic producers of an active ingredient or inert ingredient at the time EPA issues a data requirements notice (FFDCA section 408(p) test order), would bear the costs of testing and would be informed of all other order recipients.
- The recipients of the FFDCA section 408(p) test orders would have strong incentives to work together to develop data jointly and to share test costs.
- Subsequent entrants into the marketplace would receive ''catch-up'' FFDCA section 408(p) test orders making them subject to the same data requirements with the same provisions to comply with the requirement by making an appropriate offer to share the test costs that includes a reasonable process for resolving disputes.
- Customers who purchase an inert ingredient from a basic producer (who becomes/is an original data submitter) would not have to participate in joint development of, or offer to pay compensation for the right to rely on, required EDSP data.

EPA believes its preferred approach would achieve for inert ingredients essentially the same outcome as the procedures under FIFRA section 3(c)(2)(B) and section 3(c)(1)(F) will produce for active ingredients.

In summary, EPA is considering adopting a policy that encourages joint data developers to agree on how to share costs and also encourages companies that enter the marketplace after the data are developed to pay reasonable compensation to the data generators. EPA's policy will resemble the provisions and procedures of FIFRA to the extent allowed by FFDCA.

1. *Minimizing duplicative testing.* As a point of clarification, a substantial amount of overlap exists between the goal of minimizing duplicative testing and the topic discussed in the next section, allowing parties to share the costs of conducting the testing. Consequently, some of the measures discussed in this section that EPA is considering adopting to try to minimize duplicative testing will have certain implications for the decisions pertaining to cost sharing, and vice versa.

The Agency recognizes that, if EPA sends test orders under the EDSP screening program to multiple companies that produce the same substance and then each recipient of the test order conducts the required studies, there could be a great deal of duplicative testing. Although not discussed in the 1998 Notice, one way to avoid such duplicative testing is to send the test orders only to a single person who would be responsible for producing the required data. Unlike FIFRA section 3(c)(2)(B), FFDCA section 408(p) does not specifically require that test orders be sent to all registrants of a particular pesticide. But, when there are multiple people that produce the substance to be tested, such an approach could potentially undercut the second goal mentioned in FFDCA section 408(p)(5)(B)—promoting ''fair and equitable sharing of test costs.'' Each company that manufactures a substance subject to EDSP screening would benefit from the production of the data, and under the most equitable approach, each should potentially pay a fair share of the cost of testing. As a practical matter, however, people would have little or no incentive to contribute to the cost of generating EDSP data unless they each received a test order. Therefore, when there are multiple producers of the substance, EPA believes that EDSP test orders should generally be issued to each producer, and not just to a single producer.

The Agency originally anticipated relying on the authority of FFDCA section 408(p) to establish new procedures to promote joint development of data by recipients of FFDCA section 408(p) test orders (63 FR 71563). Now, however, the Agency no longer believes that FFDCA section 408(p)(5) provides the authority to create express requirements for joint data development. In EPA's view, FFDCA section 408(p)(5)(B) merely establishes a qualified direction that the Agency ''[t]o the extent practicable . . . minimize duplicative testing . . . .'' This, standing alone, does not create new authority to compel companies to use arbitration to resolve disputes arising from an effort to develop data jointly, nor does it even authorize EPA to impose a requirement for joint data development. Rather, EPA believes that this provision directs the Agency to create procedures that operate within the confines of existing statutory authorities.

While FFDCA section 408(p) does not allow EPA to impose requirements identical to those authorized by FIFRA section 3 that would minimize duplicative testing, EPA has the authority under FFDCA section 408(p) to develop Agency procedures that achieve many of the same ends. Specifically, the Agency has discretion to determine what actions constitute compliance with a FFDCA section 408(p) test order, and EPA can apply this discretion in a manner that creates strong incentives for companies to voluntarily develop data jointly. While

there are good policy reasons not to require the same data from multiple entities, under FFDCA section 408(p), each recipient of a data requirements notice has a separate obligation to provide the required data. EPA thinks that FFDCA section 408(p) confers adequate discretion to consider that a recipient has fulfilled its obligation to provide data when:

- The recipient actually submits results from the required studies, or
- EPA judges that it would be equitable to allow the recipient to rely on, or cite, results of studies submitted by another person.

The Agency believes that it would generally be equitable to allow a recipient of a FFDCA section 408(p) test order to rely on the results of studies submitted by another person where:

- The data generator has given permission to the recipient to cite the results, or
- Within a reasonable period after receiving the FFDCA section 408(p) test order, the recipient has made an offer to commence negotiations regarding the amount and terms of paying a reasonable share of the cost of testing, and has included an offer to submit to a neutral third party with authority to bind the parties, to resolve any dispute over the recipient's share of the test costs, (e.g., through binding arbitration or through a state or federal court action).

The Agency believes this approach to minimizing duplicative testing, which parallels that used under FIFRA section 3(c)(2)(B), would adequately address any disincentives for the recipients of FFDCA section 408(p) test orders to develop data jointly. In the first instance, where the data generator had granted permission for another party to cite its data, the equities are clear, and EPA would have no reason for refusing to allow it. In the second instance, where the data generator received an offer to commence negotiations regarding the amount and terms of compensation and to go to a neutral decisionmaker with authority to bind the parties failing successful negotiations, EPA believes that the company has demonstrated a good faith effort to develop data jointly, and consequently would typically consider that the order recipient had complied with the order. Based on EPA's experience under FIFRA, there should be little or no reason for a data generator to decline such an offer. Moreover, if EPA did not adopt such an approach, the end result would effectively confer the sort of ''exclusive use'' property rights established under FIFRA section 3(c)(1)(F), on a broad category of data, and EPA does not believe that FFDCA section 408(p)(5) creates such rights, or provides EPA with the authority to create such rights.

In addition to the specific procedures discussed in Unit IV.C.1., many of the procedures EPA is considering adopting to address cost sharing and data compensation will effectively function to minimize duplicative testing. Similarly, EPA has taken the directive to minimize duplicative testing to the extent practicable into account in determining who would receive FFDCA section 408(p) test orders. See Units IV.C.2. and IV.D. for further discussion of these topics.

In summary, EPA currently intends that it will typically treat a suitably expressed offer to join in the development of a required study as sufficient to comply with a test order under FFDCA section 408(p).

2. *Promoting cost sharing and data compensation.* As noted in Unit IV.C.1., FFDCA section 408(p)(5)(B) directs the Agency to ''develop, as appropriate, procedures for fair and equitable sharing of test costs.'' Informed by its experience under FIFRA, EPA sees this provision as containing two related directives:

- Promotion of the sharing of costs by companies that agree to develop data jointly (''cost sharing'').
- Payment of compensation to a data generator by a person whose activity subsequent to the submission of the required data would make such payment equitable (''data compensation'').

The first directive relates to sharing the cost of developing data between parties on the market when a test order is issued. The second directive relates to the payment by a person (who was not part of a joint data development agreement) to those that originally generated and submitted data, in exchange for relying on the results of their previously submitted study. These mirror the data generation and data compensation processes that have been followed for years under FIFRA, and the Agency believes those processes are a good starting point for dealing with these issues in the context of 408(p)(5) orders. Consistent with section 408(p)(5)(B), EPA would, ''to the extent practicable,'' like to ''develop procedures for fair and equitable sharing of test costs'' not only by persons in business when the initial 408(p) test orders were issued, but also by persons who enter the marketplace after the data are submitted.

FFDCA section 408(p)(5)(B) merely establishes a qualified direction that the Agency develop ''as appropriate, procedures for fair and equitable sharing of test costs.'' This, standing alone, does not create new data compensation rights, nor does it authorize EPA to create such rights. EPA has no inherent authority to create new rights to compensation; such rights are created only by Congress, and must be explicitly created by statute. FFDCA section 408(p)(5)(B) provides none of the indicia that Congress intended to expand the current expectation as to which data are compensable. For example, FFDCA section 408(p)(5)(B) is silent on a reimbursement period, processes and acceptable arbitration organizations, EPA's role in the process, penalties for non-compliance, and exemptions. Not only does EPA believe that FFDCA section 408(p)(5) fails to provide EPA with the authority to establish unique procedures for the EDSP, but EPA believes that this provision does not authorize EPA to modify existing data compensation rights established under FIFRA section 3 or FFDCA section 408(i).

By contrast, FIFRA, TSCA, and FFDCA section 408(i) all provide specific directions to the Agency on all of these issues. FIFRA section 3(c)(1)(F) establishes an elaborate set of criteria and procedures governing the rights of data submitters to obtain either ''exclusive use'' over or data compensation for data they submit to EPA. TSCA section 4 has similarly detailed provisions. [See also 7 U.S.C. 136a (c)(1)(F)(ii)–(iii); 15 U.S.C. 2603(c)(3)–(4)]. Similarly, section 408(i) of FFDCA, which extends FIFRA data compensation rights to data submitted ''in support of a tolerance or tolerance exemption,'' effectively provides guidance on all of these issues, providing that such data ''shall be entitled to. . .exclusive use and data compensation to the same extent provided by [section 3 of FIFRA].''

In summary, EPA interprets FFDCA section 408(p)(5)(B)'s direction to require EPA to develop procedures that will promote cost sharing among test order recipients and to provide for compensation for data submitted pursuant to a FFDCA section 408(p) test order, but only to the extent either FIFRA section 3 or FFDCA section 408(i) provide for cost sharing or data compensation. As explained more fully in the remainder of this unit, however, EPA believes that its approach to minimizing duplicative testing will not only promote joint data development, but also encourage cost sharing among all test order recipients. In addition, EPA believes that most EDSP data developed in response to FFDCA section 408(p) test orders will be

compensable under FIFRA, or pursuant to FFDCA section 408(i).

As discussed in Unit IV.C.1., EPA intends to adopt procedures implementing FFDCA section 408(p) screening that will minimize duplicative testing; these measures will also have the effect of substantially fostering cost sharing among those who receive the initial test order. By using an approach which parallels that used under FIFRA section 3(c)(2)(B), any disincentives for the recipients of FFDCA section 408(p) test orders to develop data jointly would be addressed. EPA's experience with FIFRA section 3(c)(2)(B) indicates that when multiple registrants receive DCI notices to produce the same data on the same active ingredient, they form consortia that work together to develop the required data. If manufacturers and importers receive FFDCA section 408(p) test orders containing the provisions previously discussed, EPA expects that they would behave in the same manner.

a. What data are compensable under the EDSP? With respect to determining the extent to which compensation for previously submitted studies is warranted, the threshold issue is what EDSP data will be ''compensable.'' Given EPA's belief that FFDCA section 408(p)(5)(B) does not give EPA the inherent authority to create new rights to compensation, the threshold for what is ''compensable'' requires consideration of existing statutory authority for compensation. To the extent the data are otherwise covered by any provision of FFDCA or FIFRA that requires a person to offer compensation for the right to cite or rely on data submitted by another person in connection with a pesticide regulatory matter, EPA must continue to enforce those provisions.

FFDCA section 408(i) provides that data submitted under FFDCA section 408 ''in support of a tolerance or an exemption from a tolerance shall be entitled to . . . exclusive use and data compensation to the same extent provided by section 3 of [FIFRA].'' The Agency considers any data generated in response to requirements under FFDCA section 408(p) on a pesticide chemical for which there is an existing tolerance, tolerance exemption, or pending petition to establish a tolerance or an exemption to be data submitted in support of a tolerance or an exemption. In fact, FFDCA section 408(b)(2)(D)(viii) explicitly requires EPA to consider ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects,'' as part of its determination that a substance meets the safety standard. [21 U.S.C. 136a(b)(2)(D)(viii)]. Thus, EDSP data on active and inert ingredients for which there is a tolerance or tolerance exemption will be compensable as outlined under FIFRA section 3(c)(1)(F).

Moreover, data establishing whether a pesticide chemical (either active or inert) has the potential to interact with the endocrine system would be relevant to a FIFRA registration decision. Under FIFRA, EPA has a continuing duty to ensure that a pesticide meets the registration standard; EPA must consider all available data relevant to this determination. [See 7 U.S.C. 136a (2)(bb) and 3(c)(5)]. In the terms of FIFRA section 3(c)(1)(F), such data ''support or maintain in effect an existing registration.'' Thus, data generated in response to a FFDCA section 408(p) test order would be compensable as outlined in FIFRA section 3(c)(1)(F) if the data are submitted by a pesticide registrant.

In summary, most EDSP data will be compensable under FIFRA or FFDCA section 408(i). Data for active and inert ingredients that have a tolerance or tolerance exemption or are the subject of a pending petition will be compensable regardless of what companies submit the data. Other active ingredients will also be compensable as long as, in the case of a joint submission, at least one of the submitters is a pesticide registrant or applicant.

While much EDSP data will be compensable under FIFRA or FFDCA section 408(i), some EDSP data will be generated by chemical manufacturers and importers of inert ingredients that have neither a tolerance nor tolerance exemption and are not the subject of a pending petition. (EPA refers to these substances as ''non-food use inerts.'') Because such EDSP data could not be considered ''data submitted in support of a tolerance or exemption,'' the data submitted on such substances in response to a FFDCA section 408(p) test order would not be entitled to compensation under FFDCA section 408(i). Moreover, since FIFRA section 3(c)(1)(F) establishes compensation rights only for data submitted by an applicant or a registrant, data submitted to EPA in response to a FFDCA section 408(p) order by a person who is neither a registrant nor an applicant would not become compensable under FIFRA. However, although data on a non-food use inert are not compensable when submitted by a non-registrant pursuant to FFDCA section 408(p), such data would become compensable when submitted jointly by a registrant to support continued registration of a pesticide product. In addition, EPA believes that the internal procedures it intends to adopt would effectively provide manufacturers and importers with the same opportunity for cost sharing/compensation available to all other order recipients.

Given EPA's belief that FFDCA section 408(p)(5)(B) does not give EPA the authority to modify FIFRA data compensation rights, the fact that much EDSP data will also potentially be compensable under FIFRA raises questions about the interplay between the two statutes. For example, unlike FIFRA section 3(c)(2)(B), FFDCA section 408(p) does not give EPA the authority to enforce an offer to pay compensation. Thus, unless and until such data are used in support of a pesticide regulatory action under FIFRA, if a recipient of a test order made an offer but then refused to pay compensation or to participate in binding arbitration following the data submitters acceptance of that offer, the data generator's only recourse would be to seek any judicial remedies that may be available. Consequently, rather than leave recipients with any ambiguity, EPA is considering issuing orders to registrants to conduct EDSP testing pursuant to both FIFRA section 3(c)(2)(B) and FFDCA section 408(p).

Although EPA believes there are ways to make all EDSP data generated on inert ingredients compensable, EPA must consider what procedures to use to ensure persons who did not share in the cost of testing, but who benefit from the existence of such data, actually pay compensation. Under FIFRA section 3(c)(1)(F), companies that apply for registrations of pesticide products after the data were submitted either would have to offer to pay compensation for the right to cite the data or would have to generate comparable data. Consequently, in the case of active ingredients, everyone who benefits from the existence of EDSP data on an active ingredient either shares the cost of the testing as part of the joint data development under FIFRA section 3(c)(2)(B) or offers to pay compensation to the original data submitter under FIFRA section 3(c)(1)(F).

The same is not true for inert ingredients. There is no mechanism under either FIFRA or FFDCA for directly requiring payment of compensation by companies that start to manufacture or import an inert ingredient after an original data submitter has provided EDSP data on the inert ingredient. Such companies are not subject to FIFRA data compensation obligations because they are not registrants or applicants for registration.

Nonetheless, EPA believes that, by using its discretion under FFDCA section 408(p) to issue test orders to those manufacturers or importers of a substance for which EDSP data had previously been submitted who subsequently enter the market, EPA can achieve substantially the same ends.

FFDCA section 408(p)(5) provides that ''[t]he Administrator shall issue an order to ''. . .a person who manufactures or imports a substance for which testing is required under this subsection, to conduct testing in accordance with the screening program . . . .'' Thus, under FFDCA section 408(p)(5), EPA may issue a test order to a manufacturer or importer who begins to sell an inert ingredient following the submission of required EDSP data on the ingredient by manufacturers or importers who were in the marketplace when the initial test orders were issued. The Agency refers to these as ''catch-up'' test orders. As with the initial FFDCA section 408(p) test order, recipients could fulfill the testing requirement either by submitting the results of a new study or by citing the data submitted by another person. In furtherance of the goal of ''fair and equitable sharing of test costs,'' the Agency would accept citation of existing data only if the recipient either had the original data submitter's permission or the recipient had made an appropriate offer to pay compensation to the original data submitter that also determined how disputes would be resolved.

Unless new manufacturers or importers requested pesticide registrations, EPA could not readily identify new entrants in the market. EPA would largely rely on the manufacturers and importers who are part of the data submitters' task force to inform the Agency about new entrants to the market, at which time EPA could issue the FFDCA section 408(p) catch-up orders.

An issue arising under this approach is whether to send FFDCA section 408(p) test orders to subsequent entrants into the marketplace indefinitely or only to send them for a limited period of time. EPA is proposing to only send ''catch-up'' FFDCA section 408(p) test orders to subsequent entrants into the marketplace within 15 years—a time frame matching the period of compensability under FIFRA section 3(c)(1)(F). An additional issue that will need to be resolved is whether manufacturers of inert ingredients who do not themselves market the ingredients for use in pesticide products should be required to generate data in response to a 408(p) test order. See Unit IV.F.1. for further discussion of this topic. The Agency invites public comment on these issues.

b. Who will provide compensation? Although the procedures described should result in having all companies that manufacture or import an inert ingredient share equitably in the cost of generating required EDSP data, FIFRA imposes additional compensation requirements on the customers of such companies who purchase the inert ingredients for use in formulating their registered pesticides. Specifically, FIFRA section 3(c)(1)(F) requires an applicant for a new or amended registration to offer to pay compensation to the original submitter of EDSP data if the applicant's product contains an ingredient (active or inert) for which EDSP data have been submitted.

For all pesticide chemical ingredients except non-food use inerts, the Agency interprets the formulator's exemption to be applicable. Under FIFRA section 3(c)(2)(D), an applicant for registration of a product may be excused from submitting or citing data pertaining to registered products that the applicant has purchased from another person. EPA has also taken the position that this principle extends to a FIFRA applicant's purchase of food use inert ingredients, when all applicable inert ingredient data requirements have been satisfied by the inert ingredient manufacturer.

The formulator's exemption under FIFRA section 3(c)(2)(D) is not applicable to EDSP data generated on non-food use inerts (unless the data are submitted jointly by a registrant or applicant for registration). However, EPA believes that it can effectively achieve the same ends through the internal procedures it adopts, and through its discretion to selectively issue FFDCA section 408(p) test orders only to importers and manufacturers of such inert ingredients. The policy rationale underlying FIFRA's formulator's exemption is equally applicable in the case of non-food use inerts. Specifically, Congress believed that, so long as the requirements apply equally to manufacturers of a particular ingredient, the price of their product should also reflect any data development costs. Accordingly, requiring compensation of product purchasers would have the effect of requiring purchasers to pay data development costs twice—once as a condition of satisfying a FFDCA section 408(p) test order, and thereafter as part of the price of the inert ingredients they purchase to make their products. [See 49 FR 30892, August 1, 1984]. As a result, EPA is considering adopting the following procedures to determine whether the end-use formulators had met their obligations to submit EDSP screening data.

c. *How will EPA determine whether compensation obligations have been met*? Currently, EPA maintains a list of all data on active ingredients that would support a technical registration along with contact information on the owners of the data. This is the Data Submitters List. Product registrants must identify the chemicals in their product and, in the case of the active ingredient(s), they must identify the source of the ingredient(s). Product registrants typically cite the data submitted on the active ingredients to support a technical registration. The citation is accompanied by either a claim that the registrant is eligible for a formulator's exemption or proof that an offer to pay was made to the owners of the data. FIFRA requires that an applicant/registrant agree to binding arbitration to resolve issues of reasonable compensation. If the applicant or registrant fails to fulfill the agreement, the owner of the data may petition the Agency to cancel the registration. These procedures would also be applicable to EDSP data that are subject to FFDCA section 408(i).

As previously noted, compensation for data on inert ingredients has not been an issue to date so implementation of data compensation for EDSP data on inert ingredients would involve new procedures. The approach outlined here is also being considered for administering the formulator's exemption for all food use inert data; EPA intends that the procedures ultimately adopted for the EDSP will be consistent with (if not the same as) those adopted generically for all food use inert data, as there is no reason for creating separate procedures for EDSP inert data and all other food use inert data.

First, for each inert ingredient on which EPA receives EDSP data, EPA would identify the data submitter on an ''Inerts Suppliers List.'' This list would contain the names of every company that had either submitted the required EDSP data or fulfilled its obligation under a FFDCA section 408(p) test order by offering to share the cost of testing with other data developers. Second, EPA would need to require pesticide applicants and registrants to identify the source of every inert ingredient for which there are compensable EDSP data. Then, EPA would consider that the end-use formulator had adequately complied with FFDCA section 408(p)(3)'s requirement to conduct EDSP screening only if the person identified as the source for the inert ingredient appeared on the ''Inerts

Suppliers List'' for that inert ingredient. If the applicant or registrant of the end-use product chose to use a source for the inert ingredient that is not on the ''Inerts Suppliers List,'' EPA would issue an order to the manufacturer of the inert ingredient, and/or to the applicant or registrant, requiring the manufacturer and/or applicant or registrant to generate the EDSP test data.

The Agency could take the following possible approaches for applying these procedures to determine whether the end-use formulators had met their obligations to conduct EDSP screening:

i. *Determine compliance in conjunction with applications for new and amended registrations.* EPA could apply these procedures as part of the routine processing of applications for new and amended registrations. Under FIFRA section 3(c)(1)(F), the action of submitting an application would trigger the obligation to identify the source of an inert ingredient for which there were EDSP data. If the source cited by the applicant was not on the ''Inerts Suppliers List,'' the applicant would have the choice of either offering to pay compensation to a source on the list or of changing sources to a supplier already on the list. Should the applicant choose neither option, EPA would require the applicant to generate EDSP data in order to obtain its registration.

ii. *Determine compliance both in conjunction with applications for registration, and during registration review.* In addition to relying on existing procedures under FIFRA section 3(c)(1)(F), EPA could also use the registration review program authorized under FIFRA section 3(g). Under registration review, EPA reexamines all previously registered pesticide products approximately once every 15 years and, as necessary, requires the registrants to take steps necessary to come into compliance with the applicable statutory and regulatory requirements. As part of such updating, EPA could require registrants to comply with FIFRA section 3(c)(1)(F) with respect to the right to cite and rely on EDSP data pertaining to an inert ingredient in their products. Thereafter, the registrants would proceed as under the first option.

iii. *Issue test orders to end-use formulators.* This option is similar to the second, except that EPA would issue test orders under either FFDCA section 408(p) or FIFRA section 3(c)(2)(B) to end-use formulators whose products contain a particular inert ingredient, rather than waiting until registration review. Under this approach, EPA would continue to determine compliance in conjunction with applications for registration, and would also issue test orders shortly after submission of the EDSP data for a particular inert ingredient, to all registrants whose products contain a particular inert ingredient. The test orders would require the registrants either to provide the EDSP data, to cite and offer to pay compensation for existing EDSP data, or to demonstrate that the registrant purchased its product from a company on the ''Inerts Suppliers List.'' Under this approach, EPA would also determine compliance in conjunction with applications for new or amended registrations.

Among these three options, EPA prefers the first whereby data compensation would be triggered as registrants sought new or amended registrations. (As long as a registrant did not amend its registration, it would not have to make an offer to pay compensation.) This is because EPA believes that the registration and amended registration processes should effectively capture all new and existing products. EPA recognizes that although each of these procedures would make the registration process more complex and require additional resources from both the regulated community and EPA, the first seems to involve the smallest increase in administrative burden. However, EPA requests comment on the merits of the various approaches.

The alternatives differ primarily by how quickly the original data submitters could be assured that pesticide formulators are either offering to pay compensation or are buying only from a supplier on the ''Inerts Suppliers List.'' Under the third option, this accounting would occur shortly after submission of the EDSP data when all affected registrants would receive test orders shortly after the submission of the EDSP data and orders would require affected registrants to comply within a short time period. The second option would require registrant responses only as EPA reviewed products containing a particular active ingredient. At the end of 15 years, however, all registrants would have been required to comply with FIFRA section 3(c)(1)(F). While these differences may seem significant, the Agency thinks that, in reality, there is little difference between the options. If all manufacturers and importers were parties to the initial submission, and so long as EPA promptly issues ''catch up'' orders under FFDCA section 408(p) to new manufacturers and importers of the inert ingredient as they enter the marketplace, a product registrant should always discover that its supplier is already on the list.

As discussed, the requirements for instituting such procedures could be onerous and would become more onerous over time as more inert ingredients go through the EDSP. Registrants would eventually have to identify the source of all inert ingredients, many of which can pass through multiple packaging, wholesale, and retail steps before being purchased by a formulator. Any time the registrant, or an actor in the supply chain, changed sources, an amendment would be necessary along with a new claim of exemption or offer to pay compensation. This would discourage registrants from changing sources, even between suppliers on the ''Inerts Suppliers List,'' potentially limiting competition and leading to higher costs for producers and consumers of pesticide products. EPA would have to process all changes, verify that exemptions are valid, and maintain the ''Inerts Suppliers List,'' as well as distinguish between compensable data and non-compensable data.

D. What Procedures Can EPA Apply for Handling CBI?

FFDCA section 408(p)(5)(B) also requires that EPA, to the extent practicable, develop, as necessary, procedures for the handling of CBI. Many of the same considerations laid out in Unit III.C. are equally relevant to EPA's implementation of this directive. EPA is therefore adopting a consistent approach with respect to the handling of CBI.

As with the directives to develop procedures for sharing test costs and minimizing duplicative testing, EPA also does not believe that FFDCA section 408(p)(5)(B) provides the authority for the Agency to either create new rights or to modify existing rights to confidentiality. Rather, EPA believes that this provision directs the Agency to create procedures that operate within the existing confines of FFDCA section 408(i), FIFRA section 10, the Freedom of Information Act (FOIA), and the Trade Secrets Act.

As explained in Unit IV.C., because EPA will consider much of the data submitted in response to FFDCA section 408(p) orders to be submitted in support of a tolerance or tolerance exemption, such data would be entitled to confidential treatment to the same extent as under FIFRA section 10, pursuant to FFDCA section 408(i). In addition, CBI submitted by pesticide registrants in response to a FFDCA section 408(p) test order would be considered as part of the registration process, and would therefore be considered to be data submitted in support of a registration. As such that information would be directly subject to

FIFRA section 10. However covered, data subject to FIFRA section 10 would be provided certain protections that go beyond those authorized by FOIA. For example, FIFRA section 10(g) generally prohibits EPA from releasing information submitted by a registrant under FIFRA to a foreign or multinational pesticide producer, and requires the Agency to obtain an affirmation from all persons seeking access to such information that they will not disclose the information to a foreign or multinational producer. FFDCA section 408(i) extends the protection available under FIFRA section 10 for data submitted in support of a tolerance or tolerance exemption.

All other CBI submitted in response to a FFDCA section 408(p) test order (i.e., data not in support of a registration or tolerance/tolerance exemption) is only protected by the provisions of the Trade Secrets Act which incorporates the confidentiality standard in FOIA Exemption 4. FOIA requires agencies to make information available to the public upon request, except for information that is ''specifically made confidential by other statutes'' or data that are ''trade secrets and commercial or financial information obtained from a person and is privileged or confidential.'' [5 U.S.C. 552(b)(4)]. Note that substantive criteria must be met to claim confidentiality of business information, as specified in 40 CFR 2.208.

As with EPA's approach for data compensation, EPA would consider that data submitted jointly with a registrant, or as part of a consortium in which pesticide registrants participate, to be data submitted in support of a tolerance/tolerance exemption or registration, and therefore entitled to protection under FIFRA section 10. However, if a non-registrant chooses not to partner with a registrant, such data would only be subject to the protections available under FOIA and the Trade Secrets Act.

E. Who Would Receive FFDCA Section 408(p) Test Orders Under the EDSP and How Will They Be Notified?

Under FFDCA section 408(p)(5)(A), EPA ''shall issue'' EDSP test orders ''to a registrant of a substance for which testing is required . . . or to a person who manufactures or imports a substance for which testing is required.'' EPA has generally identified the following categories of potential test order recipients:

• *Technical registrants (basic manufacturers of pesticide active ingredients)* – Entities who manufacture or import an active ingredient *and* hold an active EPA registration (technical registrants in most cases). Usually a product with technical registration is used in the formulation of other pesticide products. However, EPA also uses this term in this Notice to include registrants who use an integrated system to produce their own active ingredient, as well as those who use an unregistered technical active ingredient. In the interest of simplifying this document, the phrase ''technical registrant'' will be used to refer to: (1) Registrants of a technical grade of active ingredient; (2) registrants whose products are produced using an integrated system, as defined in 40 CFR 158.1539(g); and (3) registrants who use an unregistered technical active ingredient to manufacture their pesticide product.

• *End-use registrants (customers)* – Registrants whose products contain an active ingredient or an inert ingredient. The registrant does not necessarily manufacture or import the active pesticide ingredient or inert.

• *Manufacturers/importer* – Entities who manufacture or import an inert ingredient that do not necessarily have to hold an EPA registration for the sale of pesticide products. This would also include those manufacturers of pesticide products that are intended solely for export, so long as another company has a U.S. pesticide registration for the chemical, or an import tolerance exists for that chemical.

1. *Technical registrants and manufacturers/importers vs. all registrants and manufacturers/importers.* Under FFDCA section 408(p)(5)(A), EPA ''shall issue'' EDSP test orders ''to a registrant of a substance for which testing is required . . . or to a person who manufactures or imports a substance for which testing is required.'' Registrants are entities that hold a license for the sale of pesticide products. Pesticide products contain multiple substances, including both active and inert ingredients. EPA thinks that this language gives EPA the discretion to send FFDCA section 408(p) test orders to:

a. Persons who manufacture or import an active ingredient or inert ingredient.

b. Registrants whose products contain an active ingredient or an inert ingredient.

c. People in both groups.

Thus, the universe of recipients of FFDCA section 408(p) test orders is potentially very large. In most cases, however, the Agency expects that only one or a few companies would actually take the lead in organizing and conducting required EDSP studies. For pesticide active ingredients, the data developers are likely to be the companies that manufacture the substances subject to test orders (or who import the substances from a foreign manufacturer), as opposed to those who purchase the ingredient from a manufacturer or importer and mix it to make a pesticide product.

For pesticide active ingredients, EPA believes sending FFDCA section 408(p) test orders both to the technical registrant and to the end-use registrant (their customers) would lead to unnecessary administrative costs for EPA and the regulated industry. Similarly for inert ingredients, EPA believes sending FFDCA section 408(p) test orders to both the manufacturers/importers of the inert ingredient and to the end-use registrants (whose pesticide product contains that inert ingredient and the manufacturer's/importer's customer) would also be unduly burdensome to the Agency and the regulated community. Issuing FFDCA section 408(p) test orders to all registrants of pesticide products containing the chemical would also serve to increase the number of recipients, making the formation of data development groups more challenging administratively. Further, issuing FFDCA section 408(p) test orders to all registrants of pesticide products containing the chemical is unnecessary to promote fair and equitable sharing of test costs. Product registrants, which are often small businesses, would be quite unlikely to directly contribute to the actual conduct of the required testing and may simply reformulate their products in response to an order. Accordingly, EPA is considering an approach that limits the issuance of FFDCA section 408(p) orders only to the technical registrant of an active ingredient and to the manufacturer/importer of the inert ingredients rather than to all registrants whose products contain the ingredient.

2. *Pesticide active ingredients.* The Agency can easily identify the technical registrants of active ingredients. As previously noted, a technical registrant holds a registration for a specific active ingredient that the technical registrant formulates into end-use (or retail) products they produce or that the technical registrant sells to other companies for formulation into end-use products. Typically much of the safety data EPA requires is conducted on the technical grade active ingredient, rather than on the end-use product. [See generally, 40 CFR part 158]. Consequently, the ''technical registrants,'' who are typically larger companies, have historically been responsible for generating the data to support theend-use registrations.

Registrants of end-use products generally rely on the data generated by the technical registrants in accordance with the ''formulator's exemption'' in FIFRA section 3(c)(2)(D). In addition, there is a subset of registrants that do not purchase a substance for use as an active ingredient, but produce it themselves through an integrated process. These registrants cannot rely on the formulator's exemption to satisfy data requirements, but must generate data themselves or offer to pay for relevant data that were previously generated by another registrant (such as a technical registrant).

As noted previously, some active ingredients do not have a separate technical registration because a single company manufactures the chemical and formulates it into pesticide products, but does not sell the chemical separately to other formulators. The data to support a technical registration exist, but are incorporated into the data for the product registrations.

Test orders under FFDCA section 408(p) may be sent either to pesticide active ingredient technical registrants, or to both pesticide active ingredient technical registrants and all end-use registrants that utilize that pesticide active ingredient in their registered product. EPA prefers the first approach.

The primary disadvantage to issuing orders solely to technical registrants arises in the (unlikely) event that the technical registrant fails to submit the EDSP data. The penalty for failure to comply with a FFDCA section 408(p) test order is suspension of the technical registrant's registration. However, because EPA had not issued a test order to the end-use registrant, EPA would have no basis for suspending the end-use registrant's registration, and the end-use registrant could legally continue to sell its products, even though, just like the technical registrant, it had not submitted EDSP data. Moreover, even if EPA immediately issued a test order to the end-use registrant, the test order could not compel immediate compliance; the registrant would need to be given adequate time to generate the data.

Nonetheless, EPA believes that this disadvantage is ultimately unlikely to be significant. First, if the technical registration has been suspended, EPA expects that the end-use formulator would be unlikely to find a source for its active ingredient, and consequently would be unable to produce a product even though it could legally sell one. Second, it has been EPA's experience that the technical registrants rarely, if ever, fail to comply with DCIs, and thus, the issue is unlikely to arise in practice.

A second issue is that some active ingredients are ''commodity chemicals,'' that is, they may be used both in non-pesticidal products, such as drugs or cleaning products, and as active ingredients in pesticide products. When a company produces such a commodity chemical without specifying its future use, FIFRA does not require registration of the chemical until it appears in a product that is intended for a pesticidal purpose. However, FFDCA section 408(p)(5) specifies that EPA is to send test orders to manufacturers and importers of ''a substance for which testing is required under this subsection,'' and does not limit testing requirements only to manufacturers/importers of a pesticide chemical. Once EPA issues a test order for a pesticide chemical, a person who manufactures that chemical, even if not for use as a pesticide, is clearly manufacturing a substance for which testing is required, and consequently, is subject to EPA's authority under the plain language of FFDCA section 408(p)(5).

EPA requests comment on whether or not to send FFDCA section 408(p) test orders to producers of commodity chemicals that do not hold a pesticide registration for a product containing the substance to be tested.

3. *Inert ingredients*. For inert ingredients, test orders under FFDCA section 408(p) may be sent to manufacturers/importers only, or to both manufacturers/importers and one or more pesticide registrants who use the inert ingredient in their pesticide product. For inert ingredients, manufacturers/importers include any company that manufactures or imports the inert chemical regardless of whether they are a registrant and regardless of whether they directly sell the chemical for use as a pesticide inert.

For the purposes of discussion, EPA identified two subclasses of inerts:

- Food use inerts, i.e., inert ingredients with an existing or pending tolerance or an existing or pending tolerance exemption.
- Non-food use inerts.

In addition, Unit IV.E.3.c. discusses the special considerations that arise when an inert ingredient is contained within a mixture whose composition is both proprietary and unknown by the registrant who purchases it for use in a registered pesticide product; EPA refers to this as an ''inert in a proprietary mixture.''

a. *Food-use inerts*. If an inert has an existing or pending tolerance or tolerance exemption, data compensation and data confidentiality protection are available pursuant to FFDCA section 408(i). For this class of inert ingredients, EPA's preferred option is to issue FFDCA section 408(p) test orders only to manufacturers and importers. Limiting the universe of FFDCA section 408(p) test order recipients should reduce the resources needed to issue the test order (EPA) and to comply with the test order (regulated community) and facilitate joint data submissions and cost sharing.

Another approach would be to issue test orders to both manufacturers and importers and to all registrants (both technical and end-use) of products containing the inert(s). While this approach would use the procedures familiar to registrants under FIFRA section 3(c)(2)(B), this advantage does not outweigh the added administrative burdens associated with the process of identifying and notifying all registrants using an inert ingredient in their pesticide formulations, and the requirement for all of these registrants to respond to the FFDCA section 408(p) test orders and DCI notices, without compromising CBI. Moreover, many product registrants may simply reformulate their products in response to such an order, which would require altering their registrations. EPA would like to avoid such disruptions if there are no data to indicate that the current formulation poses any risks.

However, as discussed in Unit IV.C., issuing FFDCA section 408(p) test orders to both end-use registrants and manufacturers and importers of food use inerts would have implications for the timing of the accounting with respect to registered end-use pesticide products. In other words, issuing orders would assure that EPA determined shortly after receiving the data that all end-use formulators either purchased their ingredient from a company on the ''Inert Suppliers List''; made an offer to pay; or received a test order to generate data. EPA's preferred approach is to address compensation obligations as registrants apply for or amend registrations. Unit IV.C., however, discusses in more detail two other alternatives.

b. *Non-food use inerts.* EDSP data submitted on non-food use inerts are not covered by the data compensation and data confidentiality provisions of FFDCA section 408(i) or by FIFRA, unless the data are submitted by a registrant or a consortium that includes at least one registrant. In recognition of this fact, EPA has identified two possible options with regard to who receives the FFDCA section 408(p) test orders and under what legal authority the orders are issued. The options differ in administrative complexity and in the extent to which the resulting data

receive protections under FIFRA section 3 and section 10.

First, EPA could send the FFDCA section 408(p) test orders only to manufacturers/importers of the substance used as a non-food use inert ingredient. This option has the principal advantage of simplicity (compared to the other options) and it limits the administrative resources required for implementation by both the regulated community and EPA. Under this option, however, data generators may not receive added protections under FIFRA for proprietary information or compensation from applicants and registrants that used the inert ingredient to formulate their pesticide products. Even if FIFRA's compensation provisions would not apply, the procedure whereby companies entering the market after submission of the EDSP data would receive ''catch-up'' FFDCA section 408(p) test orders would most likely lead to the manufacturers and importers subject to the initial FFDCA section 408(p) test orders receiving offers to share test costs equitably.

The second option would involve sending FFDCA section 408(p) test orders to both manufacturers and importers and sending both FFDCA section 408(p) test orders and DCI notices under FIFRA section 3(c)(2)(B) to registrants whose products contain the inert ingredient (end-use registrant). This option has one principal disadvantage over the first option—assuming at least one registrant participated in the data development, this option would basically double the administrative burden to EPA and the regulated community and have the same significant disadvantages as discussed in connection with sending FFDCA section 408(p) test orders to all registrants of products containing a food use inert. (See Unit IV.E.3.a.).

After weighing the advantages and disadvantages of these options, EPA believes that the first option represents the best balance. In large measure, this is based on the Agency's judgment that the burden to both the Agency and the recipients associated with issuing test orders to all end-use registrants cannot be justified by the slight advantages offered by issuing orders to end-use registrants. EPA expects that manufacturers generally know who purchases their products, and thus do not need EPA to identify them. Thus, manufacturers who wish to partner with a registrant would still be able to do so, without the need for EPA to also issue a test order to the end-use registrant.

c. *Inert ingredients in a proprietary mixture.* The Agency faces unique and particularly complex issues when dealing with a registrant whose pesticide product contains an inert ingredient that is present only because the registrant purchases a ''proprietary mixture.'' A proprietary mixture is a product that contains one or more inert ingredients and for which the exact composition is not known by the purchaser. EPA requires the manufacturer of proprietary mixtures to identify the ingredients in the product, and EPA considers this information in deciding whether to approve the registration of the product. But because the manufacturer of the proprietary mixture considers its composition a trade secret, EPA is prohibited from disclosing this confidential information to the registrant or others.

For example, an end-use pesticide product may contain ''Super Surfactant Ultra'' as an inert chemical component, but the formulator of theend-use pesticide product does not know the exact contents of ''Super Surfactant Ultra.'' The Agency would face a difficult (if not impossible) dilemma if EPA determined that it was necessary to obtain EDSP data on one of the ingredients in ''Super Surfactant Ultra,'' and EPA had chosen a procedure that involved sending FFDCA section 408(p) test orders and/or DCI notices to all registrants whose product contained that ingredient. In such a case, EPA may be prohibited from disclosing information that could divulge the contents or nature of the inert ingredients in ''Super Surfactant Ultra'' to the pesticide end-use registrant. Since the very issuance of the test order could divulge confidential proprietary information (the fact that ''Super Surfactant Ultra'' contains a particular inert ingredient) to the recipient (the registrant who purchases ''Super Surfactant Ultra'' but does not know its composition), EPA may not be able to include the registrants who purchase ''Super Surfactant Ultra'' among the recipients of the test orders. If EPA does not send test orders to the registrants whose products contain a proprietary mixture from the list of recipients, these registrants would unfairly escape the obligation to respond to the test order. On the other hand, if EPA does send test orders to generate data on a specific inert ingredient to registrants whose products contain a proprietary mixture, EPA would potentially violate the prohibitions against disclosing CBI.

If an inert ingredient appears in a pesticide product only as a constituent of a proprietary mixture, there appears to be no practicable way to minimize duplicative testing or to extend data compensation and data confidentiality protections to data submitted for the purposes of the EDSP unless the inert manufacturer is willing to disclose the confidential composition of the mixture to at least one pesticide registrant. EPA believes that a manufacturer might give EPA permission to disclose to a registrant the fact that a proprietary mixture contains a particular inert ingredient in order to ensure that the registrant complied with the data compensation procedures to identify the source of an inert ingredient. As previously discussed, EPA cannot issue test orders or DCI notices to pesticide registrants unless EPA can identify the substance to be tested. Consequently, because of confidentiality issues (among other reasons), EPA's preference would be to issue FFDCA 408(p) test orders involving inert ingredients in confidential mixtures only to manufacturers/importers and to registrants whose production, sale, or use of the inert ingredient can be determined by publicly available information. Another alternative would be to issue test orders to the manufacturer/importer of the confidential mixture, rather than for its individual components. This would not involve any disclosure of CBI, but it could lead to duplicative testing in that an ingredient may already have been tested separately. In addition, this option raises difficult scientific issues involved in testing mixtures. EPA will continue to explore this issue, and would welcome commenters' suggestions.

4. *Summary of who would receive orders under EPA's preferred approaches.* Specifically under EPA's preferred approach, EPA would take the following actions to maximize joint data development, data compensation, data confidentiality protections, and resource efficiency:

- Pesticide active ingredients. Test orders issued pursuant to FFDCA section 408(p) and FIFRA section 3(c)(2)(B) would be sent to technical registrants of the pesticide active ingredient.
- Inert ingredients. Test orders issued pursuant to FFDCA section 408(p) would be sent to current manufacturers and importers; ''catch-up'' FFDCA section 408(p) test orders would be sent to manufacturers and importers who subsequently enter the marketplace after the original orders had been issued.

5. *How will EPA identify order recipients*? For FFDCA section 408(p) test orders involving pesticide active ingredients, the Agency will rely on the Office of Pesticide Programs' (OPP's) Office of Pesticide Programs Information Network (OPPIN). OPPIN is an internal OPP database for query, input and

tracking of pesticide products, ingredients, studies, regulatory decisions and other information. The OPPIN system is typically used to produce study bibliographies or lists of registered products.

For FFDCA section 408(p) test orders involving inerts, the Agency will use OPPIN (where applicable) and rely on other databases to identify appropriate manufacturers/importers and end-use registrants. These other databases may include publicly available sources like Dun and Bradstreet, online marketing material, etc. The Agency is interested in public comment on the Agency's approach to identify FFDCA section 408(p) test order recipients for inert ingredients.

EPA generally plans to make public the list of recipients of FFDCA section 408(p) test orders and DCI notices and to invite comments from the public identifying additional persons who should have received the data requirements notices. Commenters could either identify themselves or another person as additional candidates (with proper substantiation) for receipt of a FFDCA section 408(p) test order. Although not the Agency's preferred approach, if EPA sends test orders to pesticide registrants for EDSP data on inert ingredients, the Agency may not be able to release a complete list of test order recipients that includes the names of all affected registrants because this list could effectively disclose proprietary information about the composition of their formulations. (As discussed in Unit IV.C., EPA would have to give affected registrants the option of identifying an agent to represent them in matters relating to the test order, including being listed on the list of recipients of the test order.) The list of recipients could be published in the **Federal Register**, or posted on the Agency's website. For example, the Agency is considering posting the status of the orders on the website so that both recipients and the public can check on the status of responses to the orders, and the list of recipients could be part of that posting. The Agency seeks comment on the mechanism for making the list of recipients public.

6. *How will order recipients be notified*? Order recipients would be notified through their direct receipt of a FFDCA section 408(p) test order via registered mail. They would receive an order packet that will contain the instructions, background materials, and forms needed to comply with the order. (See the draft order template in the docket).

F. How Should Recipients Respond to a Test Order?

The following procedures would be used by recipients who are responding either to an initial FFDCA section 408(p) test order or to a ''catch-up'' test order issued to a person who began to manufacture or import an inert ingredient after EDSP data on a substance had been submitted to EPA. These options would also be appropriate for responding to test orders issued jointly under the authority of FFDCA section 408(p) and FIFRA section 3(c)(2)(B).

1. *Initial response*. Each recipient would be directed to provide a response to EPA within 90 days of the issuance of the order. This response is intended to allow the recipient to provide EPA with its intended response. To simplify completion of this initial response within the 90 days, EPA has created a simple Order Response Form. EPA intends to include the form in the order packet, pre-populated with the basic information to connect it to the specific order. A copy of the draft form is available in the public docket for your review and EPA encourages your comments and suggestions.

The recipients of a test order would have several potential response actions from which they could choose. The 90–day response options include:

a. *Recipient indicates that they intend to generate new data.* The recipient would choose this option to indicate that they agree to individually generate new data for each test specified to meet the requirements of the order. In the case of data pertaining to an inert ingredient for which there is no tolerance or exemption, the recipient may negotiate an agreement to have a registrant of a product containing the inert ingredient submit the data so that the data qualify for compensation under FIFRA—the data generator and the registrant could work out among themselves how actual compensation would be apportioned.

b. *Recipient indicates that they intend to enter (or offer to enter) into an agreement to form a consortium to generate the data.* The recipient would choose this option to indicate that they are forming a task force or consortium to comply with the test order. Recipients would identify who is part of the consortium, as well as indicate for which tests data will be generated. Alternatively, recipients may provide EPA with documentation that they have made an offer to commence negotiations regarding the amount and terms of paying a reasonable share of the cost of testing, and have included an offer to submit to a neutral third party with authority to bind the parties, to resolve any dispute over the recipient's share of the test costs, (e.g., through binding arbitration or through a state or federal court action). Note: if the required data are not generated by the person(s) to whom the offer is made, all parties, including those that have made offers to pay or otherwise joined the consortium, would be held to have violated the test order.

c. *Recipient indicates that they intend to rely on existing data.* The recipient would choose this option to indicate that they intend to submit or cite existing data that satisfies the request in the test order. The recipient's response would include either the data or a reference to the data for each test that are being cited. Data compensation procedures may apply. If the study is not exactly as specified in the protocols attached to the test order, the recipient should provide an explanation as to why the data should be accepted as satisfaction of the test order. The Agency would expect that any such hazard-related data would be scientifically comparable to data that would be generated by the EDSP.

For the initial screening, EPA expects that opportunities for order recipients to respond in this manner will be limited. As mandated by the statute, EPA has developed and validated appropriate assays and it is unlikely that other studies would be acceptable under data quality standards. During the validation process, however, a chemical on the initial list might have been a test subject for a study listed in the order. Order recipients may be able to cite these data if protocols, which were modified over the course of validation, are sufficiently similar. EPA intends to provide recipients with information about the availability of validation studies along with the orders.

d. *Recipient claims that they are not subject to the test order.* The recipient would choose this option to indicate that they are not subject to the order because: (i) They are not a pesticide registrant, or (ii) they do not currently manufacture or import a chemical that anyone uses as a pesticide active or inert ingredient. An explanation of the basis for the claim, along with appropriate information to substantiate that claim, would be required to allow EPA to evaluate the claim.

e. *Recipient indicates that they intend to voluntarily cancel or reformulate the product registration or discontinue the manufacture/importation of the chemical.* Registrants may request voluntary cancellation of their product's pesticide registration pursuant to FIFRA

section 6(f). Doing so would initiate the existing procedures for a voluntary cancellation. Under those procedures, the registrant may either adopt the standard procedures for sale or use of existing stocks of their pesticide, or may propose an alternative procedure. Alternatively, in the case of an inert ingredient, (if EPA issues orders to end-use registrants) a registrant may submit an application to amend the formulation of its product by removing the ingredient. In the case of manufacturers/importers of both inert ingredients and commodity chemical active ingredients, the recipient would choose this option to indicate that they intend to agree to cease manufacture or importation of the chemical.

An additional option that EPA is considering would allow the manufacturer/importer to continue production of the chemical, but would involve their commitment to cease supplying the chemical for use in pesticide products. EPA does not prefer this alternative because of the practical difficulties in enforcing such agreements, given that there may not be a direct link between the manufacturer and the ultimate consumer. For example, if Company A receives the order and commits to sell that product only for non-pesticidal uses, it is unclear how Company A could enforce that agreement on its customers. Thus, Company A may agree not to sell it to Company B for use as a pesticide, but if Company B sells it to Company C for use as a pesticide inert, it is unlikely that EPA would discover it. Moreover, the most that EPA could do in that circumstance would be to send an order to Company B requiring testing. Further, tracking such agreements by reviewing the source of the end-use registrant's inert ingredient would be extremely complicated and burdensome for both the Agency and the end-use registrant.

If, as a result of comments or further analysis, EPA determines that orders will be sent to pesticide product registrants (end-use registrants), recipients may have an additional response option of claiming a formulator's exemption as discussed in the next section.

f. Claim a formulator's exemption. A product registrant who receives an order to test a chemical who purchases the chemical from another recipient who has agreed to generate the data may be eligible for a formulator's exemption. EPA will confirm claims of eligibility. A formulator's exemption would become invalid if the supplier of the chemical were not to submit the data either individually or jointly with other recipients.

g. Request an exemption under FFDCA section 408(p)(4). EPA recognizes that FFDCA section 408(p)(4) provides that ''the Administrator may, by order, exempt from the requirements of this section a biologic substance or other substance if the Administrator determines that the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.'' In 1998, the Agency assessed the need to develop a specific list of substances to be exempted from EDSP testing or an exemption process for those substances that might not be anticipated to produce endocrine effects in humans (See section L of the December 1998 notice at 63 FR 71542). In the 1998 FR notice, EPA also provided several examples of substances that might possibly be exempted. As the EDSP has evolved and more endocrine research has been conducted, it has become evident that, at this time, development of criteria to exempt certain substances or to otherwise identify any pre-determined or blanket exemptions from endocrine disruptor testing is premature.

For the initial screening, EPA is not aware of sufficient data that would allow the Agency to confidently determine that a chemical meets the statutory standard for an exemption—i.e., that it is not anticipated to interact with the endocrine system. Although a relatively broad range of toxicity data are available for pesticide active ingredients regulated under FIFRA, in most cases EPA has not yet established how the available data might be confidently used to predict the endocrine disruption potentials of these chemicals. This may be due to the non-specific nature of an effect or effects observed, questions related to whether the mode of action in producing a given effect or effects is or are endocrine system-mediated in whole or in part, or the lack of relevant data to make a judgment altogether. However, if an order recipient believes that this showing can be made for its chemical, the Agency will consider requests to issue such an exemption order on a case-by-case or chemical-by-chemical basis in response to individual submissions. In order for the Agency to make the necessary statutory finding to issue the exemption, the request would need to provide any hazard-related information that you believe would allow EPA to determine that your chemical is anticipated to not be an endocrine disruptor, i.e., is not anticipated ''to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.''

In addition, the Agency does not expect an FFDCA section 408(p) test order recipient to submit a request to bypass Tier 1 screening as part of their response to the test order. As indicated in the September 2005 **Federal Register** notice announcing the Agency's chemical selection approach and again in the June 2007 **Federal Register** notice announcing the availability of the draft list of chemicals for initial screening under the EDSP, any company subject to a testing requirement under Tier 1 may assert during the comment period for the draft list that the chemical is an endocrine disruptor and that the Tier 1 EDSP screening is unnecessary. EPA does not intend to permit chemicals on the draft list to bypass Tier 1 screening and move directly to Tier 2 testing without appropriate data to support such an action. As such, EPA expects that this issue will be addressed in finalizing the list of chemicals for initial screening, which will occur before any FFDCA section 408(p) test orders are issued.

2. *Generate the data specified in the test order.* As indicated in their Initial Response Form, the recipient's next step would be to generate the data specified in the FFDCA section408(p) test order. EPA currently anticipates that the tests would need to be conducted using the test protocols that would be attached to the order as background materials because of the statutory requirement that the test method be validated. If, however, an order recipient believes a deviation from the required protocol is needed, they should first consult the Agency before deviating from the test protocol. All requests should be submitted with a clear rationale to allow the Agency to evaluate the request in a timely manner. All protocol variations would be reviewed by EPA and a response would be sent to the specific order recipient in a timely fashion.

In addition, recipients generating data must adhere to the good laboratory practice (GLP) standards described in 40 CFR part 160 when conducting studies in response to a FFDCA section 408(p) test order.

3. *Submit the data specified in the test order.* The Agency intends to adopt the same submission procedures as those that are currently used for submitting other data in support of a pesticide registration, with only a few modifications. Once the data are generated, the recipient would prepare a submission package for transmittal to EPA. The orders will include requirements on how the data should be formatted. If EPA were issuing orders today, it is likely the Agency would require that the submission be

consistent with the following requirements.

a. *Format for data submission.* As part of a cooperative NAFTA project, EPA and the Canadian Pest Management Regulatory Agency (PMRA) developed standard data evaluation formats, or templates. The templates have been in use by these agencies since 2002 for writing their data evaluation records (DERs) of studies submitted under FIFRA and FFDCA to EPA and the Canadian data codes (DACOs). Although such templates do not currently reflect the assays being considered for the EDSP Tier 1 battery, the Agency intends to review and, as necessary, develop new or revised templates before the deadlines for submission of the data under the EDSP.

The DER that the agencies prepare contains a study profile documenting basic study information such as materials, methods, results, applicant's conclusions and the evaluator's conclusions. The templates provide pesticide registrants and the public an opportunity to gain a better understanding of the regulatory science review and decision-making process. The agencies encourage registrants to include study profiles based on these templates in their study documents for all pesticide types. These templates describe the layout and scope of information that should be contained within a study profile and can serve as guides for preparation of study documents. Use of the templates improves the likelihood of a successful submission, since the information necessary for an efficient agency review is outlined. Additional details about these templates are available at: *http://www.epa.gov/pesticides/regulating/studyprofile_templates/*.

In addition, Pesticide Registration (PR) Notice 86–5, entitled *Standard Format for Data Submitted Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Certain Provisions of the Federal Food, Drug, and Cosmetic Act (FFDCA)*, describes the requirements for organizing and formatting submittals of data supporting a pesticide registration (*http://www.epa.gov/PR_Notices/pr86-5.html*). The Agency has begun the process of updating the guidance in PR Notice 86–5 to further clarify the data submission process for pesticide related submissions and will provide the public with an opportunity to comment on the proposed revisions to PR 86–5 consistent with the procedures described in PR Notice 2003–3, entitled *Procedural Guidance for EPA's Office of Pesticide Programs Procedures Concerning the Development, Modification, and Implementation of Policy Guidance Documents*; (*http://www.epa.gov/PR_Notices/pr2003-3.pdf*).

The Agency also encourages FFDCA section 408(p) test order recipients to submit completed study profiles and supporting data in an electronic format (PDF) whether submitting one or several studies. For more information, go to the electronic data submissions website at *http://www.epa.gov/oppfead1/eds/edsgoals.htm*.

b. *Transmittal document.* In order for EPA to track the compliance of each order recipient, each submission in satisfaction of a FFDCA section 408(p) test order must be accompanied by a transmittal document that includes the following information:

- Identity of the submitter.
- The date on which the submission package was prepared for transmittal to EPA.
- Identification of the FFDCA section 408(p) test order associated with the submission (e.g., the test order number).
- A list of the individual documents included in the submission.

c. *Individual study or test result documents.* Unless otherwise specified by the Agency, each submission must be in the form of individual documents or studies. EPA does not anticipate requiring the resubmission of previously submitted documents absent a specific Agency request. Instead it would be sufficient for previously submitted documents to be cited with adequate information to identify the previously submitted document. EPA would typically expect each study or document to include the following:

i. A title page including the following information:

- The title of the study, including identification of the substance(s) tested and the test name or data requirement addressed.
- The author(s) of the study.
- The date the study was completed.
- If the study was performed in a laboratory, the name and address of the laboratory, project numbers or other identifying codes.
- If the study is a commentary on or supplement to another previously submitted study, full identification of the other study with which it should be associated in review.
- If the study is a reprint of a published document, all relevant facts of publication, such as the journal title, volume, issue, inclusive page numbers, and date of publication.

ii. Upon submission to EPA, each document must be accompanied by a signed and dated document containing the appropriate statement(s) regarding any data confidentiality claims as described in the FFDCA section 408(p) test order.

iii. A statement of compliance or non-compliance with respect to GLP standards as required by 40 CFR 160.12, if applicable.

iv. A complete and accurate English translation must be included for any information that is not in English.

4. *Request an extension.* The FFDCA section 408(p) test order would identify a due date for completing the data specified and submitting it to EPA. If an order recipient would like to request an extension of time to complete the testing, the request should be submitted with a clear rationale for the extension, and any supporting material, in order to allow the Agency to properly and timely assess the request. All such requests would be reviewed by EPA and a response would be sent to the requester in a timely fashion.

5. *Maintaining records.* The FFDCA section 408(p) test order would identify the records that the recipient should maintain. In general, the Agency expects recipients to maintain copies of the data and other information submitted to the Agency. Under FIFRA section 8, all producers of pesticides, devices, or active ingredients used in producing pesticides subject to FIFRA, including pesticides produced pursuant to an experimental use permit and pesticides, devices, and pesticide active ingredients produced for export, are required to maintain certain records. As such, any recipients who are pesticide registrants or otherwise submit their data in support of a pesticide registration would be held to the recordkeeping standards in 40 CFR part 169. Recipients who are not a registrant would also be asked to maintain records related to the generation of the data as specified in the order. Consistent with 40 CFR 169.2(k), this includes all test reports submitted to the Agency in support of a registration or in support of a tolerance petition, *all* underlying raw data, and interpretations and evaluations thereof. These records shall be retained as long as the registration is valid and the producer is in business, and made available to EPA or its agent for inspection.

G. What are the Consequences for a Recipient Who Fails to Respond or Comply with the Test Order?

For pesticide active ingredients, FFDCA section 408(p)(5)(C)(i) allows EPA to issue to any registrant that fails to comply with a FFDCA section 408(p) test order ''a notice of intent to suspend the sale or distribution of the substance by the registrant.'' The proposed suspension ''shall become final at the

end of the 30–day period beginning on the date that the registrant receives the notice of intent to suspend, unless during that period a person adversely affected by the notice requests a hearing or the Administrator determines that the registrant has complied'' with the FFDCA section 408(p) test order. As specified by FFDCA section 408(p)(5)(C)(iii), the Administrator shall terminate a suspension if the Administrator determines that the registrant has complied fully.

For all inert ingredient manufacturers/importers, FFDCA section 408(p)(5)(D) allows EPA to apply the penalties and sanctions provided under section 16 of TSCA (15 U.S.C. 2615) ''to any person (other than a registrant) who fails to comply with an [FFDCA section 408(p)] order.''

H. Process for Contesting a Test Order/ Pre-enforcement Review

FFDCA section 408(p) does not explicitly address the process for challenging a test order (e.g., if the test order recipient disagrees that a particular study is appropriate or valid, or believes the time frame for completing the study is too short). The statute only specifies the rights and procedures available to test order recipients who have failed to comply with a test order. Further, the issue is somewhat complicated by the fact that the statute establishes different procedures for enforcing the test orders against pesticide registrants and against chemical manufacturers or importers. [Compare 21 U.S.C. 136a(p)(3)(C) and (D)]. Nor is this issue resolved by FFDCA section 408's general judicial review provision; that provision is applicably solely to the enumerated actions, which do not include FFDCA section 408(p) test orders. [21 U.S.C. 136a(h)]. Consequently, FFDCA section 408(p) is ambiguous on a number of issues, such as the availability of pre-enforcement review, and the issues that may be raised in an enforcement hearing.

EPA has considered two alternative interpretations to resolve this ambiguity. Under one approach, EPA would interpret the statute such that the same procedures are applicable to both registrants and other test order recipients. EPA prefers this approach because it would simplify the process for both EPA and order recipients. The other approach would result in different procedures for pesticide registrants and all other test order recipients based on the disparate requirements established by FFDCA section 408(p)(5)(C) and (D).

For pesticide registrants, FFDCA section 408(p)(5)(C) directs EPA to initiate proceedings to suspend the registration when a registrant fails to comply with a test order. [21 U.S.C. 136a(p)(3)(C)(i)]. Prior to the suspension, a registrant may request a hearing, but the statute restricts the issues in the hearing solely to whether the registrant has complied with the test order. [21 U.S.C. 136a(p)(3)(C)(ii)]. The substance of the test order may not be challenged during this hearing. Thus, for example, to challenge whether EPA should have required a particular study, the registrant would need to challenge the test order in the appropriate district court *at the time the order is issued. [See*, e.g., *Atochem v EPA,* 759 F.Supp. 861, 869-872 (D.D.C 1991)]. The basis for the statutory restriction is that the FFDCA section 408(p) test order constitutes final agency action, and as such, is subject to review upon issuance. [*See, Atochem, supra]*. In addition, as discussed above, EPA currently intends to issue the test orders for testing of active ingredients jointly under FFDCA section 408(p) and FIFRA section 3(c)(2)(B). The procedures discussed above for challenging an FFDCA section 408(p) test order are wholly consistent with the procedures applicable to FIFRA section 3(c)(2)(B), which similarly limits the issues for resolution in any suspension hearing held for failure to comply with the order. [See 7 U.S.C. 136a(c)(2)(B)(iv)]. Accordingly, EPA believes that for pesticide registrants, pre-enforcement review of the test order would be available directly in federal district courts under any approach, and based on the plain meaning of the statute, would be the only means to obtain judicial review of the validity of the test order itself.

By contrast, FFDCA section 408(p)(5)(D) provides that non-registrants (manufacturers or importers of inert ingredients) are subject to monetary penalties through an enforcement proceeding, using the process established by TSCA section 16. Under TSCA section 16, civil penalties of up to $25,000 per day may be assessed, after an administrative hearing is held on the record in accordance with section 554 of the Administrative Procedures Act (APA). [15 U.S.C. 2615(a)(1)–(2)(A)]. Before issuing a final penalty order, EPA must provide notice of its intention to assess the penalty, including a draft of the final penalty order, and provide the recipient with the opportunity to request a hearing within 15 days of the date the notice has been received. [15 U.S.C. 2615(a)(2)(A)]. [*See also*, 40 CFR 22.13–22.14]. TSCA section 16 also specifies that the following issues shall be taken into account in determining the amount of a civil penalty: The nature, circumstances, extent and gravity of the violation(s); the violator's ability to pay; the effect on the violator's ability to continue to do business; any history of prior violations; the degree of culpability; and such other matters as justice may require. [5 U.S.C. 2615(a)(2)(B)].

Although neither FFDCA section 408(p) nor TSCA section 16 expressly imposes the same restriction on the issues that a non-registrant may raise in the penalty hearing, EPA's preferred interpretation of the statutes and existing regulations would be to impose a similar restriction. In large measure this interpretation turns on the fact that, at least for pesticide registrants, FFDCA section 408(p) test orders constitute final agency action, and consequently, would be subject to review in the appropriate district court. Logically, it makes sense to interpret the test order to be final for all parties, as the provisions of FFDCA section 408(p)(5)(A) that describe the test order do not distinguish between registrants and other test order recipients. Moreover, EPA believes that, in general, it would simplify matters to have a single set of procedures for all test order recipients. Accordingly, pre-enforcement judicial review of the test order would be available, and would be the means by which any test order recipient would challenge the validity of the test order. As a consequence of that interpretation, EPA would interpret TSCA section 16 to restrict the issues that may be raised in any enforcement hearing to whether the test order recipient had violated the test order, as well as the appropriate amount of any penalty. This interpretation would be consistent with the issues listed in TSCA section 16(a)(2)(B), which do not expressly relate to the validity of the underlying requirement.

Alternatively, EPA could interpret the legal status of the order to differ between registrants and non-registrants, based on the procedural distinctions created by FFDCA section 408(p)(5)(C) and (D). Under this approach, FFDCA section 408(p) test orders would constitute final agency action only for pesticide registrants, and only those test orders would be subject to pre-enforcement review in federal district courts. Accordingly, non-registrants would only be able to challenge the provisions of the order in an enforcement proceeding, and would not be entitled to pre-enforcement review in district court.

I. Informal Administrative Review Procedure

EPA intends to include a provision in the FFDCA section 408(p) test order that requires the order recipients to raise any questions or challenges concerning the issuance of the test order to the Agency in response to the order. EPA would review the issues presented and provide a written response within a specified time frame. The Agency understands that it would need to respond within sufficient time for the order recipient to either comply with the order or determine whether to pursue its concerns through judicial review. EPA requests comment on whether such a provision would be appropriate, and on the appropriate parameters for such a requirement, including the deadline for order recipients to initially provide their concerns, and the time frame for the Agency's response.

J. Adverse Effects Reporting Requirements

Under FIFRA section 6(a)(2), pesticide product registrants are required to submit adverse effects information about their products to the EPA. Among other things, the implementing regulations in 40 CFR part 159, subpart D provide registrants with detailed instructions on whether, when, and how to report information in the possession of the registrant or its agents.

In addition, under TSCA section 8(c), companies can be required to record, retain and in some cases report ''allegations of significant adverse reactions'' to any substance/mixture that they produce, import, process, or distribute. EPA's TSCA section 8(c) rule requires producers, importers, and certain processors of chemical substances and mixtures to keep records concerning significant adverse reaction allegations and report those records to EPA upon notice in the **Federal Register** or upon notice by letter. The TSCA section 8(c) rule also provides a mechanism to identify previously unknown chemical hazards in that it may reveal patterns of adverse effects which otherwise may not be otherwise noticed or detected. Further information is available under 40 CFR part 717.

Under TSCA section 8(e), U.S. chemical manufacturers, importers, processors and distributors are required to notify EPA within 30 calendar days of new, unpublished information on their chemicals that may lead to a conclusion of substantial risk to human health or to the environment. The term ''substantial risk'' information refers to that information which offers reasonable support for a conclusion that the subject chemical or mixture poses a substantial risk of injury to health or the environment and need not, and typically does not, establish conclusively that a substantial risk exists. For additional information about TSCA section 8(e), please go to *http://www.epa.gov/oppt/chemtest/pubs/sect8e.htm*.

EPA does not require duplicate submission of EDSP results under FIFRA section 6(a)(2) or TSCA section 8(c) or (e). Any information submitted under FIFRA section 6(a)(2) or TSCA section 8(c) or 8(e) procedures does not need to be submitted again to satisfy the FFDCA section 408(p) test order. The test order recipient should instead submit the necessary information to cite to the previously submitted information as described earlier in this document.

V. Specific Topics for Commenters

While interested person are invited to comment on any issue discussed in this notice, the Agency would find it particularly helpful if interested commenters address the general issues and specific questions, set forth below. If, for example, commenters have ideas on how the Agency could minimize duplicative testing that are not captured in the questions below, the Agency welcomes comments on the general issue itself.

A. Minimizing Duplicative Testing

1. If there are multiple entities who manufacture or import a substance for which EDSP data are needed, under what circumstances, if any, should EPA send test orders only to a single entity?

2. When issuing test orders for EDSP data on an active ingredient, should EPA issue the test order under the authority of FFDCA section 408(p), under FIFRA section 3(c)(2)(B), or under both authorities?

3. When issuing test orders for EDSP data on an inert ingredient, should EPA issue the test order under the authority of FFDCA section 408(p), under FIFRA section 3(c)(2)(B), or under both authorities?

B. Cost Sharing

What evidence of a willingness to share the cost of generating EDSP data should EPA require?

C. Data Compensation

1. What evidence of a willingness to pay compensation for previously submitted EDSP data should EPA require?

2. Should EPA issue ''catch-up'' FFDCA section 408(p) test orders to people who begin to manufacture or import an inert ingredient after required EDSP data have been submitted?

3. If so, at what point (e.g., during registration review) and for how long should EPA issue such ''catch-up'' test orders?

4. What alternatives should EPA consider for the 15–year period proposed, and why?

D. Who Should Receive Test Orders?

1. If EPA relies on FIFRA section 3(c)(2)(B) as an authority to require data for an active ingredient, should EPA send the DCI only to technical registrants or to all registrants whose products contain the active ingredient?

2. Should EPA send FFDCA section 408(p) test orders to producers of commodity chemicals that do not hold a pesticide registration for a product containing the substance to be tested?

3. How should EPA address the issuance of test orders for an inert ingredient that is contained in a ''proprietary mixture''?

4. After EPA has received compensable EDSP data on an inert ingredient, which authority should EPA use to ensure that pesticide registrants are buying their inert ingredient only from sources on the ''Inert Suppliers List'': FIFRA section 3(c)(1)(F) only, FIFRA section 3(c)(1)(F) and FIFRA section 3(g), or FIFRA section 3(c)(1)(F) and FIFRA section 3(c)(2)(B)?

E. How to Identify Potential Recipients of Test Orders

1. Please suggest an efficient approach to identify potential recipients of FFDCA section 408(p) test orders for inert ingredients. Please identify any databases that will provide the best information.

2. Please comment on the preferred mechanism for making the list of recipients of FFDCA section 408(p) test orders public.

3. Please comment on a mechanism to identify entities that should have received a test order, but that were not initially identified.

4. How should EPA evaluate requests for exemptions under FFDCA section 408(p)(4)?

F. How to Respond to Test Orders

1. Is 90 days sufficient time for recipients of a test order to respond with their intentions for complying with the order?

2. Should EPA allow a person to ''fulfill'' the requirements of a test order by promising not to manufacture or import an active ingredient? An inert ingredient?

3. Should EPA allow a person to ''fulfill'' the requirements of a test order

on an inert ingredient by promising not to manufacture or import the inert ingredient for use in a pesticide product? If so, how would EPA enforce such an agreement?

G. Procedural Issues

1. When should a recipient of a test order for EDSP data on an inert ingredient be able to judicially challenge the issuance of the order?
2. Should EPA include an optional or mandatory informal administrative review procedure by which a person who wishes to judicially challenge the validity of a test order would raise the objections first with the Agency?
3. Should the 90–day response form be mandatory or optional?
4. Should test protocols be attached to the order and/or posted on a website?
5. Should the Agency establish a website of FFDCA section 408(p) test order recipients to facilitate the formation of consortia?

H. Due Process Options

EPA requests comment on whether the informal administrative review procedures (as outlined in this document) would be appropriate. Please also comment on the appropriate parameters for such a requirement, including the deadline for order recipients to initially provide their concerns, and the time frame for the Agency's response.

I. CBI

Provide comments on how best to address CBI concerns associated with notifying HPV inert manufacturers, including the difficulty of informing registrants, without disclosing the identity of the inert.

J. Estimated Test Costs and Paperwork Burden

1. Please provide comments on the estimated test costs and burden hours presented in the draft ICR. Explain the basis for your estimates in sufficient detail to allow EPA to reproduce the estimates.
2. Provide comments on the methodology used by EPA to estimate the burden for data generation, which is based on the total estimated test costs.
3. Is it reasonable to continue to assume that as much as 35% of the test costs represents the paperwork burden?

VI. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993, as amended by Executive Order 13422 on January 18, 2007 (72 FR 2763), this policy statement is considered to be a ''significant guidance document'' under the terms of the amended Executive Order because this policy might raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA notified the Office of Management and Budget (OMB) and submitted a draft of this policy to OMB under Executive Order 12866. Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of the Executive Order.

B. Paperwork Reduction Act (PRA)

The information collection requirements described in this document have been submitted for review by the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Elsewhere in today's **Federal Register** is a separate document that announces the availability of the draft Information Collection Request (ICR) document that has been prepared by EPA, identified by EPA ICR No. 2249.01). Pursuant to the PRA, the Agency is seeking public review and comment on the ICR before it submits the ICR to OMB for approval under the PRA. The following is a brief summary of the ICR document, which describes the information collection activities and EPA's estimated burden in more detail.

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 codified in Chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. As a new ICR, the Agency does not yet have an OMB control number for this information collection activity. Once assigned, EPA will announce the OMB control number for this information collection in the **Federal Register**, and will add it to any related collection instruments or forms used.

Burden under the PRA means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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.

Under the EDSP, the information collection activities include reviewing the order and related instructions, providing the initial response, participating in a consortia, generating the data, submitting the data, requesting an extension, and maintaining records. As described in more detail in the ICR, the total estimated per chemical/per respondent paperwork burden is 2,649 hours, with an estimated cost of $194,252. The total annualized estimated paperwork burden for this ICR is 93,655 hours, with an estimated total annual cost of $6,887,418. The Agency believes that this is an over estimate because this estimate assumes that the respondent actively participates in all potential activities, including developing a consortia, generating all of the potential data, requesting an extension and submitting the data. The Agency also assumed that all of the potential tests currently scheduled for validation would be used for each chemical. It is highly unlikely that any one respondent would need to participate at this level, or that all of the tests would be performed for each respondent.

Direct your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to EPA using the public docket that has been established for the ICR (Docket ID No. EPA–HQ–OPPT–2007–1081). The Agency will consider and address comments received on the ICR as it develops the final policy and related final ICR.

VII. References

1. EPA. Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) Final Report. August 1998. *http://www.epa.gov/scipoly/oscpendo/pubs/edspoverview/finalrpt.htm.*

2. Organization for Economic Cooperation and Development (OECD). Final Report of the OECD Workshop on Harmonization of Validation and Acceptance Criteria for Alternative

Toxicological Test Methods. August 1996.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests, Reporting and recordkeeping.

Dated: December 7, 2007.

James B. Gulliford,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–24166 Filed 12–12 ndash;07; 8:45 am]

BILLING CODE 6560–50–S

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 January 4, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Summerville/Trion Bancshares, Inc., Summerville, Georgia; to acquire 100 percent of the voting shares of Dunnellon State Bank, Dunnellon, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. First National Bank Group, Inc., Edinburg, Texas; to acquire 9.90 percent of the voting shares of Southside Bancshares, Inc., Tyler, Texas, and thereby indirectly acquire voting shares of Southside Delaware Financial Corporation, Dover, Delaware, and Southside Bank, Tyler, Texas.

Board of Governors of the Federal Reserve System, December 6, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–23930 Filed 12–12–07; 8:45 am]

BILLING CODE 6210–01–S

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 January 7, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Floridian Financial Group, Inc., Daytona Beach, Florida; to acquire 100 percent of the voting shares of Orange Bank of Florida, Orlando, Florida.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Black River BancVenture, Inc., Memphis, Tennessee; to become a bank holding company by acquiring 42 percent of the voting shares of Michigan Community Bancorp, Ltd., and thereby indirectly acquire voting shares of Lakeside Community Bank, both of Sterling Heights, Michigan.

2. Black River BancVenture, Inc., Memphis, Tennessee; to acquire 15 percent of the voting shares of Community Shores Bank Corp., and thereby indirectly acquire voting shares of Community Shores Bank, both of Muskegon, Michigan.

3. Black River BancVenture, Inc., Memphis, Tennessee; to acquire 15 percent of the voting shares of Allegiance Bank of North America, Bala Cynwood, Pennsylvania.

4. Black River BancVenture, Inc., Memphis, Tennessee; to acquire 15 percent of the voting shares of Bay Commercial Bank, Walnut Creek, California.

5. Capitol Bancorp LTD, and Capital Development Bancorp Limited VII, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Pisgah Community Bank, Asheville, North Carolina (in organization).

6. Capitol Bancorp LTD, and Capital Development Bancorp Limited VII, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Colonia Bank, Phoenix, Arizona (in organization).

7. Capitol Bancorp LTD, and Capital Development Bancorp Limited VII, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Reidsville Community Bank, Reidsville, North Carolina (in organization).

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. CSB Financial Corporation; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, both of Miles, Texas.

Board of Governors of the Federal Reserve System, December 10, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–24141 Filed 12–12–07; 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 January 7, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Black River BancVenture, Inc., Memphis, Tennessee; to acquire 6 percent of the voting shares of SFB Bancorp, Inc., and thereby indirectly acquire voting shares of Security Federal Bank, both of Elizabethton, Tennessee, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

2. Black River BancVenture, Inc., Memphis, Tennessee; to acquire 9.9 percent of the voting shares of Quaint Oak Bancorp, and thereby indirectly acquire Quaint Oak Savings Bank, both of Southampton, Pennsylvania, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 10, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–24139 Filed 12–12–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee (TRR Subcommittee). The primary agenda topic is the peer review of the findings and conclusions presented in seven draft NTP Technical Reports of rodent toxicology and carcinogenicity studies in conventional rats and mice, one draft NTP Technical Report on a study in Crl:SKH–1 hairless mice, and one draft NTP Toxicity Report (see Preliminary Agenda below). The TRR Subcommittee meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on any draft report discussed at the meeting (see ''Request for Comments'' below). The TRR Subcommittee deliberations on the draft reports will be reported to the NTP Board of Scientific Counselors (BSC) at a future date.

DATES: The TRR Subcommittee meeting will be held on February 27–28, 2008. All individuals who plan to attend are encouraged to register online by February 20, 2008, at the NTP Web site (*http://ntp.niehs.nih.gov/go/15833*). Written comments on the draft reports should be received by February 13, 2008. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov*. Requests should be made at least 7 days in advance of the event.

ADDRESSES: The TRR Subcommittee meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. Public comments and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary (NTP Office of Liaison, Policy, and Review, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–4253, fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background

The primary agenda topic is the peer review of the findings and conclusions of eight draft NTP Technical Reports of rodent toxicology and carcinogenicity studies and one draft NTP Toxicity Report (see Preliminary Agenda below).

Attendance and Registration

The meeting is scheduled for February 27–28, 2008, from 8:30 a.m. to adjournment and is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP website by February 20, 2008 (*http://ntp.niehs.nih.gov/go/15833*) to facilitate access to the NIEHS campus. Please note that a photo ID is required to access the NIEHS campus. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

Availability of Meeting Materials

A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/15833*) or may be requested in hardcopy from the Executive Secretary (see **ADDRESSES** above). The draft reports will be posted on the NTP website after January 15, 2008. Following the meeting, summary minutes will be prepared and made available on the NTP Web site.

Request for Comments

Public input at this meeting is invited and time is set aside for the presentation of public comments on any draft report. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair. Persons wishing to make an oral presentation are asked to notify Dr.

Barbara Shane via online registration at *http://ntp.niehs.nih.gov/go/15833,* phone, or email (see **ADDRESSES** above) by February 13, 2008, and if possible, to send a copy of the statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting. Written comments on the draft reports in lieu of an oral presentation are also welcome and should also be received by February 13, 2008, to enable review by the TRR Subcommittee and NTP staff prior to the meeting. Written comments received in response to this notice will be posted on the NTP website. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Background Information on the NTP Board of Scientific Counselors

The NTP BSC is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall program and its centers. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. The TRR Subcommittee is a standing subcommittee of the BSC. BSC members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Its members are invited to serve overlapping terms of up to four years. BSC and TRR Subcommittee meetings are held annually or biannually.

Dated: December 3, 2007.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

Preliminary Agenda

National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee Meeting

February 27–28, 2008, Rodbell Auditorium, Rall Building, National Institute of Environmental Health Sciences, 111 TW Alexander Drive, Research Triangle Park, NC 27709

NTP Technical Reports (TR) Scheduled for Review—February 27, 2008

TR 544 Dibromoacetonitrile (CAS No. 3252–43–5)

○ Water disinfection by-product formed from the reaction of chlorine oxidizing compounds with nitrogen containing organic compounds in water containing bromine; by-product of ozone disinfection.

TR 549 Bromochloroacetic Acid (CAS No. 5589–96–8)

○ Water disinfection by-product.

TR 553 Aloe Phototoxicity Studies (Aloe vera gel CAS No. 8001–97–6; Aloe-emodin CAS No. 481–72–1) in Crl:SKH–1 hairless mice

○ Used as a therapeutic dermatologic agent in the treatment of burns and in healthcare and cosmetic products.

TR 556 Chromium Picolinate Monohydrate (CAS No. 27882–76–4)

○ Used as a dietary supplement for losing weight.

TR 557 β-Myrcene (CAS No. 123–35–3)

○ Intermediate in the manufacture of terpene alcohols that are intermediates in the synthesis of aroma and flavoring chemicals; used as a scent in the manufacture of cosmetics, soaps, and detergents and as a peripheral analgesic; active ingredient in lemon grass tea; identified in numerous plants and in the emissions of plywood veneer dryers.

TR 555 1,2–Dibromo–2,4–dicyanobutane (CAS No. 35691–65–7)

○ Used in cosmetics and other household products.

February 28, 2008

TOX 82 Estragole (CAS No. 140–67–0)

○ Used in perfumes, as a flavoring agent in foods and liquors, and as an antimicrobial agent against acid-tolerant microorganisms, and to produce anise oil.

TR 551 Isoeugenol (CAS No. 97–54–1)

○ Food flavoring agent; found in cloves, bay leaves, cinnamon, and tobacco; used as a fragrance in household and personal hygiene products including perfumes, lotions, soaps, and detergents.

TR 554 5–(Hydroxymethyl)–2–furfural (CAS No. 67–47–0)

○ Occurs naturally in honey, apple juice, citrus juices, beer, brandy, milk, and breakfast cereals; used in the synthesis of dialdehydes, glycols, ethers, amino alcohols, acetals, and phenol/furfural novolak-type resins.

[FR Doc. E7–24131 Filed 12–12–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Nuclear Materials and Equipment Corporation (NUMEC) in Apollo, Pennsylvania, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On November 29, 2007, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for exposure to ionizing radiation while working at the Nuclear Materials and Equipment Corporation (NUMEC) in Apollo, Pennsylvania from January 1, 1957, through December 31, 1983, for a number of workdays aggregating at least 250 workdays or in combination with workdays within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on December 29, 2007, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: December 3, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–24110 Filed 12–12–07; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0020]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Coal Workers' X-ray Surveillance Program (CWXSP)—Reinstatement with change—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CWXSP is a federally mandated program under the Federal Mine Safety and Health Act of 1977, Public Law–95–164. The Act provides the regulatory authority for the administration of the CWXSP, a surveillance program to protect the health and safety of underground coal miners. This Program requires the gathering of demographic and logistical information from coal mine operators, participating miners, participating x-ray facilities, and participating physicians. The Appalachian Laboratory for Occupational Safety and Health (ALOSH), located in Morgantown, WV, is charged with administration of this Program. Over the past two years, participation in the CWXSP has increased, which is reflected in this submission for renewal. Physicians taking the B Reader Examination are asked to complete a registration form. There are approximately 300 physicians each year taking the certification exam.

Miners participating in the CWXSP must fill out the Miner Identification Document. Mine operators are required to file a Mine X-ray Plan with NIOSH approximately every 3 years. Approximately 200 mine operators have X-ray plans that are due for renewal each year. An X-ray facility that applies to be a NIOSH-approved facility for providing miners X-rays must complete an approval packet. There are approximately 25 X-ray facilities each year seeking approval into the CWXSP Program. There will be no costs to study participants. The total estimated annualized burden hours are 2330.

Estimated Annualized Burden

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Physicians/interpretations	10,000	1	3/60
Physicians/certification	300	1	10/60
Miners	5000	1	20/60
Mine operators	200	1	30/60
X-ray facilities	25	1	30/60

Dated: December 6, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–24137 Filed 12–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–05CL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Formative Evaluation of Adults' and Children's Views Related to Promotion of Healthy Food Choices—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In Fiscal Year (FY) 2004, Congress directed the Centers for Disease Control and Prevention (CDC) to conduct formative research on the attitudes of children and parents regarding nutrition behavior. Specifically, the conferees' FY 04 Appropriation Language instructs CDC to research parents' and children's viewpoints on ''the characteristics of effective marketing of foods to children

to promote healthy food choices.'' Upon completion, a report detailing CDC's findings is to ''be submitted to the appropriate Committees of jurisdiction of Congress.''

In response, CDC has contracted with the Academy for Educational Development (AED) to conduct focus groups to identify key audience concepts around food choices, and develop and test concepts and messages aimed at increasing healthy food choices among children. For the research to be useful to Congress and to the nation's public health agenda, a thorough understanding of children at different developmental stages regarding their attitudes toward healthy food choices, and the barriers and motivations for adopting and sustaining these choices is essential. Additionally, a thorough understanding of parents and caregivers who can influence the health behaviors of children is important.

A total of 384 children and 336 parents will be organized into 90 focus groups (8 respondents per focus group). The 90 focus groups will be conducted in three phases (36 focus groups in Phase 1, 36 focus groups in Phase 2, and 18 focus groups in Phase 3). The 36 focus groups in Phase 1 will consist of 24 focus groups of ''tweens'' (children ages 9–12 years) and 12 focus groups of their parents or key caregivers. Current literature and opinion leaders both strongly suggest that tweens greatly influence nutritional decisions made by their parents and younger siblings. Similarly, the 36 focus groups in Phase 2 will consist of 24 focus groups of children (ages 5–8 years) and 12 focus groups of their parents. Although parents and children may be recruited as parent-child dyads, parents will participate in focus groups for parents only, and children will participate in focus groups for children only. Phase 3 will consist of 18 focus groups involving parents or caregivers of children ages 2–4 years; no children in this age group will be recruited.

Focus group recruitment will incorporate appropriate representation of diverse ethnic groups, and the groups will be held in several cities to ensure broad geographic representation. Participants will be recruited by focus group facilities utilizing their database to solicit and screen interested parties. Both parents and children will participate in the screening process as well as focus group participation. It is expected that two households will be screened in order to recruit each participating Parent, Child, or Parent-Child dyad. Each focus group will be asked to respond verbally. The moderator will utilize a prepared guide which is designed to specifically ensure that the discussion is limited to 2 hours. The focus group moderator will use one guide for all focus groups involving children, and a similar but distinct guide for all focus groups involving parents or caregivers.

The intent of this research is to solicit input and feedback from potential audiences. The information gathered will be used to develop, refine, and modify messages and strategies to increase healthy food choices by children and parents. There is no cost to respondents other than their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden (in hours)	Total burden (in hours)
Children	Screener D1 for Parent & Child Groups	384	1	3/60	19
	Screener D2 for Child Only Groups	384	1	3/60	19
	Focus Group Moderator's Guide for Children/Youth	384	1	2	768
Parents	Screener D1 for Parent & Child Groups	192	1	7/60	22
	Screener D2 for Child Only Groups	192	1	7/60	22
	Screener D3 for Parent Only Groups	288	1	7/60	34
	Focus Group Moderator's Guide for Parents	336	1	2	672
Total					1,556

Dated: December 6, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–24138 Filed 12–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–06AO]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of an Occupational Safety and Health (OSH) Program for the Small Business Wood Pallet Industry—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Federal Occupational Safety and Health Act of 1970, Section 501, enables CDC/NIOSH to carry out research relevant to the health and safety of workers. The goal of this project is to determine whether receipt of a NIOSH informational manual about occupational safety and health (OSH) concerns specific to pallet manufacturing and recycling will motivate owners or managers to take actions resulting in a safer workplace. The theoretical basis of the study follows the Transtheoretical Model (TTM) of Prochaska and DiClemente [1984]. This model states that change is defined by 5 stages: (1) Pre-contemplation—people are unaware of problems and are not thinking seriously about changing within the next 6 months, (2) contemplation—the stage where people become aware that a problem exists and intend to take action within the next 6 months, (3) preparation—investigating options and intending to take action in the next 30

days, (4) action—people institute environmental changes and change their overt behavior, and (5) maintenance—people continue the gains obtained during the action stage for longer than 6 months.

Small business entrepreneurship is a vital component of the U.S. economy. OSH activities, including research, regulation, enforcement, and intervention historically have not focused on small businesses despite their predominance and relatively large numbers of employees overall. Few small business establishments provide on-site occupational health units, medical screening tests, pre-placement physicals, or employ or use industrial hygiene or safety personnel/consultants. As a consequence, prevention of occupational injury and illness is often difficult in small business establishments because they generally have few safety and health resources, do not hire staff devoted to safety and health activities, and often lack the ability to identify occupational hazards and conduct surveillance.

The pallet manufacturing industry has higher injury rates than general industry. The incidence rate for non-fatal injuries in the wood pallet and skid (SIC 2448) manufacturing industry was 226% greater than that for general industry. The type of injuries sustained at wood pallet manufacturers and their rates of increase [2002] compared to general industry included amputations (2220% higher), cuts and punctures (378% higher), fractures (237% higher), bruises (221% higher) sprains and strains (133% higher) and back pain (305% higher).

Through this study, NIOSH will evaluate the feasibility and effectiveness of providing carefully constructed OSH information to one segment of small business pallet makers. The informational manual will be divided into eight chapters targeting specific hazards relevant to pallet work and will provide the owners/managers with suggestions for controlling those hazards. Chapters were selected based on prior NIOSH site visits to a sample of pallet makers and in consultation with the National Wood Pallet and Container Association. The chapters include: An introduction to OSH, developing a site-specific safety program, controlling noise, improving ventilation, saw safety, forklift safety, preventing build up of carbon monoxide, and prevention of musculoskeletal injury through ergonomics.

This project will utilize two groups—a treatment group and a control group—in a pre-post design. One hundred eighty pallet companies will be randomly selected and assigned to two groups from a list of small pallet businesses in the United States that was provided by a market research firm. Both groups will participate in a baseline survey conducted by telephone. The treatment group will then receive the NIOSH informational manual by mail and the control group will not receive the manual until the conclusion of the study. Five months after the mailing, both groups will participate in a follow-up telephone survey designed to assess whether receipt and use of the material encouraged owners/managers to contemplate, plan, or initiate OSH changes at their facility. The questionnaire will determine whether owners/managers have progressed from baseline along the stage of change continuum because of receipt and use of the NIOSH material, or if some other factor is influencing their safety and health actions. It is possible that improvements in OSH may occur due to other influences and not from the informational manual. For example, it is possible that some event will occur that will make the entire industry more aware of OSH. Use of a similar control group will help in this determination. Data collection will occur within a 12 month period. However, the entire NIOSH study will occur over a two-year period. There will be no cost to respondents except their time to participate in the telephone survey. The total estimated annualized burden hours are 40.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Pallet company safety and health managers	Initial Questionnaire (screening only)	9	1	3/60
	Initial Questionnaire (complete)	48	1	12/60
Treatment Group	Follow-up Questionnaire	45	1	15/60
Pallet company safety and health managers	Initial Questionnaire (screening only)	9	1	3/60
	Initial Questionnaire (complete)	48	1	12/60
Control Group	Follow-up Questionnaire*	45	1	9/60

Dated: December 6, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–24140 Filed 12–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Privacy Act of 1974; New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC).

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Centers for Disease Control and Prevention (CDC) is proposing to establish a new system of records (SOR), 09–20–0171, ''Quarantine and Traveler-Related Activities, Including Records for Contact Tracing Investigation and Notification Under 42 CFR Parts 70 and 71, HHS/CDC/CCID.'' The purpose of the system is to maintain records on the conduct of activities (e.g., quarantine, isolation) that fulfill HHS's and CDC's statutory authority under sections 311 and 361–368 of the Public Health Service Act: To prevent the introduction, transmission and spread of serious communicable diseases from persons arriving into the United States from foreign countries or engaged in

interstate or international movement. Identifiable records are collected when an individual known or suspected to have been exposed to such communicable diseases arrives in the U.S. from a foreign country or travels from one state or possession to another state or possession. These records are used to: (1) Document reports of illness on airplanes, maritime vessels, and at land-border crossings of persons that may pose a public health risk and who are arriving from foreign countries or traveling between states; (2) perform contact tracing investigations and notifications of passengers and crew when known or suspected exposures to serious communicable diseases occur on board a conveyance arriving in the United States from a foreign country or while traveling from one state or possession to another; (3) inform state or local public health authorities so that these authorities may act to protect public health or safety; and (4) take actions (e.g., quarantine or isolation) as necessary to prevent the introduction, transmission, and spread of serious communicable diseases from persons arriving into the United States from foreign countries or persons engaged in interstate or international movement. Additional background information about the new system is included in the **SUPPLEMENTARY INFORMATION** section below.

DATES: *Effective Date:* CDC filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 7, 2007. CDC invites interested parties to submit comments on the proposed routine uses. To ensure that all parties have adequate time in which to comment, the new system will be effective 30 days from the publication of this notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later, unless CDC receives comments that persuade CDC to defer implementation.

ADDRESSES: Address comments to HHS Privacy Act Officer, Room 5416, Mary E. Switzer Building, Department of Health and Human Services, 330 ''C'' Street, SW., Washington, DC 20201, or via electronic mail to *MAGGIE.BLACKWELL@hhs.gov*. Comments will be available for public viewing in the public reading room located at the same address, or on the HHS Web site at *http://www.hhs.gov*. To review comments in person, please call the Division of Freedom of Information and Privacy at 202–690–7453 for an appointment.

FOR FURTHER INFORMATION CONTACT: Maggie Blackwell, HHS Privacy Act Officer, Department of Health and Human Services, Room 5416, Mary E. Switzer Building, 330 ''C'' Street, SW., Washington, DC 20201, (202) 690–7453.

SUPPLEMENTARY INFORMATION: CDC proposes to establish a new system of records: 09–20–0171, ''Quarantine and Traveler-Related Activities, Including Records for Contact Tracing Investigation and Notification under 42 CFR Parts 70 and 71, HHS/CDC/CCID.'' The CDC Division of Global Migration and Quarantine (DGMQ), the agency component responsible for quarantine- and isolation-related activities, is located within the National Center for Preparedness, Detection and Control of Infectious Diseases, the Coordinating Center for Infectious Diseases (CCID). In addition to the contact tracing investigations and notification of travelers who may have been exposed to a communicable disease, this record system supports the mission of DGMQ in meeting public health, scientific, and regulatory responsibilities.

The overall DGMQ mission is to decrease morbidity and mortality from infectious diseases among mobile populations (immigrants, refugees, migrant workers, international travelers, etc.) crossing international borders to come into the United States, and to decrease the risk of importation and spread of infectious diseases via humans, animals, and cargo. This new Privacy Act system of records is focused on decreasing the spread of infectious diseases via humans. These records concern activities (e.g., quarantine, isolation) fulfilling HHS's statutory authority under Sections 311 and 361–368 of the Public Health Service Act to prevent the spread of serious communicable diseases among persons arriving from foreign countries into the United States or engaged in interstate or international movement.

A related purpose is to collect individually identified records so that contact tracing investigations and notifications of passengers and crew can be made when known or suspected exposures to serious communicable diseases occur on board a conveyance arriving in the United States from a foreign country or while traveling from one state or possession to another state or possession.

I. Description of the Proposed System of Records

Statutory and Regulatory Basis for SOR. Sections 311 and 361–368 of the Public Health Service Act provides authorities related to preventing the introduction, transmission, and spread of serious communicable diseases from foreign countries into the United States or from one state or possession into another. These sections of the Act delineate the various quarantine- and isolation-related activities that CDC may be required to conduct.

Individually identified records must be maintained for CDC to effectively conduct many of its major quarantine- and isolation-related activities, including screening arriving international or interstate travelers for symptoms of illness that may pose a public health risk; informing state or local health authorities so that these authorities may act to protect public health or safety; and other activities required to fulfill CDC's regulatory responsibility in this area.

Examples of other CDC quarantine- and isolation-related activities that require the maintenance of individually identified records include, but are not limited to, the following:

- Responding to reports of illnesses on airplanes, maritime vessels, and at land-border crossings of persons that may pose a public health risk and who are arriving from foreign countries or traveling between states;
- Taking quarantine-related actions (e.g., quarantine, isolation) as necessary to prevent the spread of serious communicable diseases from persons arriving from foreign countries into the United States or engaged in interstate or international movement.

Collection and Maintenance of Data in the System. CDC will collect only the minimum amount of personal data necessary to achieve the purpose of this system, which is to maintain records on the conduct of quarantine-related activities that fulfill HHS's and CDC's statutory authority under Sections 311 and 361–368 of the Public Health Service Act: To prevent the introduction, transmission and spread of serious communicable diseases from persons who arrive into the United States from foreign countries or are engaged in interstate or international movement. To effectively do contact tracing investigations and notifications of passengers and crew when known or suspected exposures of serious communicable diseases occur on board of conveyance, individually identified data, such as name of traveler, country of residence, address and phone at

which they can be contacted, travel documents (e.g., passport), and seat number must be obtained. CDC collects only the minimal amount of information needed to perform contact tracing and other follow-up activities.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits CDC to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible disclosure of data is known as a ''routine use.'' The government will only release quarantine- and traveler-related information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System,'' collecting only the minimum personal data necessary to achieve the purpose of this system.

CDC has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CDC:

A. Determines that:

1. The use or disclosure is consistent with the reason that the data are being collected, e.g., to maintain records on the conduct of quarantine- and traveler-related activities that fulfill HHS's and CDC's statutory authority to prevent the introduction, transmission and spread of communicable diseases.

2. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

3. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect on and/or risk to the privacy of the individual that additional exposure of the record might bring;

4. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s); and

5. The data are valid and reliable.

B. Requires the information recipient to:

1. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

2. Remove or destroy at the earliest time all identifiable information; and

3. Agree not to use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

III. Proposed Routine Use Disclosures of Data in the System

The Privacy Act permits CDC to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected and CDC complies with administrative requirements including publishing a notice in the **Federal Register** and allowing 30 days for public comment regarding any such new ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. CDC is proposing to establish the following routine use disclosures of information maintained in the system:

A. Records may be disclosed to contractors who will perform many of the same duties as Full Time Equivalents (FTEs) within DGMQ in situations where additional staff are required. Contractors are required to maintain Privacy Act safeguards with respect to such records. These functions may include collating, analyzing, aggregating, or otherwise refining records. DGMQ contracts out certain functions when doing so would contribute to efficient and effective operations of the agency. DGMQ must be able to give a contractor the information necessary for the contractor to fulfill their duties. Safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the Statement of Work and requires the contractor to return or destroy all information at the contract's completion.

B. Records may be disclosed to state and local health departments and cooperating public health or medical authorities and their counsel to more effectively deal with outbreaks and conditions of public health significance. CDC works closely with state and local health partners to investigate possible outbreaks or other conditions of public health significance. CDC's ability to share information could prove beneficial to the health department's investigation.

C. Personal information from this system may be disclosed as a routine use to appropriate conveyance personnel, Federal agencies, state and local health departments, Department of State and embassy personnel (U.S. and foreign), and health authorities in foreign countries. These agencies and departments (U.S. and foreign) need the information to perform contact tracing investigations and to notify individuals exposed to an ill traveler that they were possibly exposed to a disease or condition of public health significance. This is compatible with the overall purpose of the system—to prevent the spread of communicable diseases.

D. Records may be disclosed to the Department of Homeland Security (DHS) to enable DHS to restrict the travel of persons who pose a public health risk and to aid in its investigations of domestic or international terrorism. This routine use helps prevent the introduction, transmission, and spread of communicable disease, particularly where terrorism is involved.

E. Identifiable information may need to be shared with medical personnel to evaluate or care for ill or exposed persons, including travelers, with the ultimate goal of protecting the public's health and safety.

F. Records may also be shared with the World Health Organization in accordance with U.S. responsibilities to ensure that CDC is in compliance with its obligations under the International Health Regulations and other international agreements—a use in line with CDC's statutory authority with regard to quarantine- and isolation-related activities.

G. Also in line with the overriding purpose of protecting public health and safety by preventing the introduction, transmission, or spread of communicable diseases, personal information may be disclosed to federal, state, and local authorities to enable them to take actions needed to place someone under quarantine or isolation, or to enforce quarantine regulations. This is again in line with CDC's statutory authority to take quarantine and isolation related actions to restrict movement if someone poses a significant health risk to others.

H. Identifiable information may be disclosed to cooperating state and local legal departments enforcing concurrent legal authority relevant to quarantine- and isolation-related activities. This is in accord with the federal government's statutory authority to cooperate with and aid state and local authorities in the enforcement of their quarantine and other health regulations.

I. Identifiable records may be referred to the appropriate agency, whether federal, foreign, state or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto when records collected within this SOR for quarantine activities indicate a violation or

potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto. This routine use is compatible in that this disclosure is being done to allow for effective enforcement of quarantine- and isolation-related requirements at various levels of government.

J. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual. When a constituent requests a congressional office to facilitate obtaining information from this CDC system, it is compatible to provide such information, since this is in line with the overall purpose of the Privacy Act, which is to provide access to the subject individual of the records the government has on him or her.

K. In the event of litigation in which the defendant is: (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States, where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity, when the Justice Department has agreed to represent such employee, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Whenever CDC is involved in litigation dealing with quarantine- or isolation-related activities and CDC policies or operations could be affected by the outcome of the litigation, CDC must be able to disclose identifiable information to the Department of Justice so that an effective defense can be presented.

IV. Safeguards

The CDC/DGMQ has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Access to quarantine records is restricted to protect the privacy of the individuals involved, and personnel with such access have been trained in Privacy Act and information security requirements. CDC/DGMQ maintains very stringent administrative, procedural and technical safeguards for the entire system of records.

Access will be limited to authorized CDC/DGMQ FTEs and contractor staff who have a bona fide need for the identifiable information to perform official job-related duties. DGMQ staff are required to have supervisory approval to access identifiable data and receive ongoing training in how to protect sensitive data. A database security package on computers controls unauthorized access to the systems. Data administrators continually review the database to ensure privacy provisions are in place and only appropriate personnel have access to the data. Attempts by unauthorized individuals are automatically recorded and reviewed regularly.

Employees maintaining records are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal and HHS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the E-Government Act of 2002; the Clinger-Cohen Act of 1996, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS and CDC policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications and the HHS Information Systems Program Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CDC proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CDC will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of individuals whose data are maintained in the system. CDC will collect only that information necessary to perform the system's purpose. In addition, CDC will make disclosures from the system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CDC, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: December 6, 2007.

James D. Seligman,

Chief Information Officer, Office of the Director, Centers for Disease Control and Prevention.

Privacy Act System of Records Notice; No. 09–20–0171

SYSTEM NAME:

Quarantine- and Traveler-Related Activities, Including Records for Contact Tracing Investigation and Notification under 42 CFR Parts 70 and 71, HHS/CDC/CCID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Global Migration and Quarantine, National Center for the Preparedness, Detection, and Control of Infectious Disease (NCPDCID), Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Building 16; MS E03, Atlanta, GA 30333.

Records may occasionally be stored at Quarantine Stations located at key ports of entry and at contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals subject to quarantine or isolation orders, ill travelers (i.e., passengers and crew), contacts of ill travelers, and/or individuals exposed or suspected of being exposed to serious communicable diseases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passenger and crew manifests from conveyances carrying individuals subject to 42 CFR parts 70 and 71, case reports, illness response forms, medical assessments, medical records (including but not limited to clinical, hospital and laboratory data and data from other relevant tests), name, address, date of birth, and related information and documents collected for the purpose of carrying out agency responsibilities under sections 311 and 361–368 of the Public Health Services Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 311, 361–368 of the Public Health Service Act.

PURPOSE(S):

This system maintains records on the conduct of activities (e.g., quarantine, isolation) that fulfill HHS's and CDC's statutory authority under sections 311, 361–368 of the Public Health Service Act to prevent the introduction, transmission and spread of communicable diseases.

Records are collected when individual known or suspected to have been exposed to serious communicable diseases arrives into the United States from foreign countries or is engaged in interstate or international movement These records are used to (1) document reports of illness that may pose a public health risk occurring while on board airplanes, maritime vessels, and at land-border crossings of persons arriving from foreign countries or traveling between states; (2) perform contact tracing investigations and notifications of passengers and crew when known or suspected exposures to serious communicable diseases occur on board a conveyance arriving in the United States from a foreign country or traveling from one state or possession to another; (3) inform international, federal, state or local public health authorities so that these authorities may act to protect public health or safety; and (4) take such actions (e.g., quarantine or isolation) as necessary to prevent the introduction, transmission, and spread of serious communicable diseases from persons arriving into the United States from foreign countries or persons engaged in interstate or international movement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records may be disclosed to contractors to handle program work duties, performing many of the same functions as FTEs within DGMQ in situations where additional staff is required. Contractors are required to maintain Privacy Act safeguards with respect to such records.

(2) Records may be disclosed to state and local health departments and other cooperating medical and public health authorities and their counsel to more effectively deal with outbreaks and other significant public health conditions.

(3) Personal information from this system may be disclosed as a routine use to appropriate conveyance personnel, Federal agencies, state and local health departments, Department of State and embassy personnel (U.S. and foreign), and health authorities in foreign countries for contact tracing investigations and notifications of possible exposures to serious communicable diseases in connection with travel.

(4) Records may be disclosed to the Department of Homeland Security to restrict travel of persons who pose a public health risk and in the instance of suspected domestic or international terrorism.

(5) Disclosure may be made to medical personnel providing evaluation and care for ill or exposed persons, including travelers.

(6) Records may be disclosed to the World Health Organization in accordance with U.S. responsibilities as a signatory to the International Health Regulations or other international agreements.

(7) Personal information may be disclosed to federal, state, and local authorities for taking necessary actions to place someone under quarantine or isolation, for enforcement of other quarantine regulations, or to protect the public's health and safety.

(8) Records may be disclosed to cooperating state and local legal departments enforcing concurrent legal authority related to quarantine or isolation activities.

(9) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, foreign, state or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(10) Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual

(11) In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, disclosure may be made to the Department of Justice to enable that Department to present an effective defense.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media and file folders for hard-copy records.

RETRIEVABILITY:

By name of individual or other identifying particulars.

SAFEGUARDS:

1. *Authorized Users:* A database security package is implemented on CDC's computer systems to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. Guard service in buildings provides personnel screening of visitors. The local fire department is located directly next door to the Clifton Road facility. The computer room is protected by an automatic sprinkler system, numerous automatic sensors (e.g., water, heat, smoke, etc.) are installed, and a proper mix of portable fire extinguishers is located throughout the computer room. Computer files are backed up on a routine basis. Hard-copy records are stored in locked cabinets at CDC headquarters and CDC Quarantine stations which are located in a secure area of the airport.

3. *Procedural Safeguards:* Protection for computerized records, both on the mainframe and the National Center Local Area Network (LAN), includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control

file sharing. There are routine daily back-up procedures, and secure off-site storage is available. To avoid inadvertent data disclosure, measures are taken to ensure that all data are removed from electronic media containing Privacy Act information. Additional safeguards may be built into the program by the system analyst, as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

Implementation Guidelines: The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, ''Minimum Security Requirements for Federal Information and Information Systems.'' Data maintained on CDC's Mainframe and the National Centers' LANs are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

RETENTION AND DISPOSAL:

Contact tracing records will be maintained in the agency until the contact investigation is complete or no longer than twelve months, in accordance with proposed retention schedules; remaining quarantine records would be maintained 10 or 20 years, based on the applicable CDC records control schedule. Disposal methods include wiping electronic media and macerating paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NCPDCID, Coordinating Center for Infectious Diseases, Bldg. 1, Rm. 6013, MS C12, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address listed above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, private physicians, state and local health departments, other health-care providers, conveyance personnel, cooperating public health agencies, foreign governments including ministries of health, and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–24142 Filed 12–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0200]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Health and Diet Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 14, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0545. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Health and Diet Survey—(OMB Control Number 0910–0545)—Extension

FDA is seeking extension of OMB approval for the Health and Diet Survey, which is a voluntary consumer survey intended to gauge and track consumer attitudes, awareness, knowledge, and behavior regarding various topics related to health, nutrition, and physical activity. The authority for FDA to collect the information derives from the Commissioner of Food and Drugs' authority provided in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

The survey consists of two independent data collection activities.

One collection, entitled ''Health and Diet Survey—General Topics,'' tracks a broad range of consumer attitudes, awareness, knowledge, and self-reported behaviors related to key diet and health issues. The other collection, entitled ''Health and Diet Survey—*Dietary Guidelines* Supplement,'' will provide FDA with updated information about consumer attitudes, awareness, knowledge, and behavior regarding various elements of nutrition and physical activity based on the key recommendations of the *Dietary Guidelines for Americans*, which are jointly issued by the Department of Health and Human Services and Department of Agriculture every 5 years.

The information to be collected with the Health and Diet Survey—General Topics will include: (1) Awareness of diet-disease relationships; (2) food and dietary supplement label use; (3) dietary practices including strategies to lose or maintain weight; and (4) awareness and knowledge of dietary fats. The information to be collected with the Health and Diet Survey—*Dietary Guidelines* Supplement will include: (1) Opinions about the nutrition information provided by the government; (2) awareness and familiarity with government nutrition programs and publications such as the Food Guide Pyramid and the *Dietary Guidelines for Americans*; (3) knowledge of the relationships between food choices, exercise habits, weight loss, and health; (4) choices surrounding exercise, calorie intake, saturated and trans fats, fruits and vegetables, whole grains, dairy, fish, meat, cholesterol, carbohydrates, salt, and sugar. The survey will also ask about use of Federal nutrition information, special diet, weight status, health status, and demographics.

FDA and other Federal agencies will use the information from the Health and Diet Survey to evaluate and develop strategies and programs to encourage and help consumers adopt healthy lifestyles. The information will also help FDA and other Federal agencies evaluate and track consumer awareness and behavior as outcome measures of their achievement in improving public health.

Description of Respondents: The respondents are adults, age 18 and older, drawn from the 50 states and the District of Columbia. Participation will be voluntary.

In the **Federal Register** of May 25, 2007 (72 FR 29332), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
General Topics: Pretest	27	1	27	0.25	6.75
General Topics: Screener	10,000	1	10,000	0.02	200
General Topics: Survey	3,000	1	3,000	0.25	750
Dietary Guidelines Supplement: Screener	4,000	1	4,000	0.02	80
Dietary Guidelines Supplement: Survey	1,200	1	1,200	0.22	264
Total					1,300.75

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based its estimate of the number of respondents and the burden hours per response on its experience with the Health and Diet Survey over the past 3 years. The agency will use a screener to select an eligible adult respondent in each household to participate in the survey. For the Health and Diet Survey—General Topics data collection activity a total of 3,000 adults in the 50 states and the District of Columbia will be interviewed by telephone. We estimate that it will take a respondent 1.2 minutes (0.02 hours) to complete the screening questions and 15 minutes (0.25 hours) to complete the entire survey. Prior to the administration of the survey, the agency plans to conduct a pretest to identify and resolve potential problems. The pretest will be conducted with 27 participants; we estimate that it will take a respondent 15 minutes (0.25 hours) to complete the pretest. For the Health and Diet Survey—*Dietary Guidelines*Supplement data collection activity a total of 1,200 adults in the 50 states and the District of Columbia will be interviewed by telephone. We estimate that it will take a respondent 1.2 minutes (0.02 hours) to complete the screening questions and 13.2 minutes (0.22 hours) to complete the entire survey. Target sample size of the combined data collection is 4,200 respondents who complete the survey.

Dated: December 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24123 Filed 12–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Quality System Regulation Educational Forum on Design Controls; Public Workshop; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of public workshop entitled ''Quality System Regulation Educational Forum on Design Controls.'' This workshop was announced in the **Federal Register** of October 11, 2007 (72 FR 57951). The amendment is made to reflect a change in the *Location* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: David Arvelo, Food and Drug

Administration, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, e-mail: *david.arvelo@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 11, 2007 (72 FR 57951), FDA announced that a public workshop entitled ''Quality System Regulation Educational Forum on Design Controls'' would be held on Friday, April 4, 2008. On page 57951, in the second column, the *Location* portion of the document is amended to read as follows:

Location: The public workshop will be held at the Adam's Mark Hotel Dallas, 400 North Olive St., Dallas, TX 75201, 214–922–8000. Directions to the facility and additional information are available at the FDA Medical Device Industry Coalition Web site at *http://www.fmdic.org/*.

Dated: December 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24144 Filed 12–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Operations and Technical Support at the NCI-Frederick.

Date: January 7, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Lalita D. Palekar, PhD. Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Bethesda, MD 20892–7405, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G–Education.

Date: February 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington Silver Spring, 8777 Georgia Ave., Silver Spring, MD 20910.

Contact Person: Sonya Roberson, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8109, Bethesda, MD 20892, 301–594–1182, *robersos@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, R25(E) Special Emphasis Panel (SEP).

Date: February 12, 2008.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington Silver Spring, 8777 Georgia Ave., Silver Spring, MD 20910.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard Room 8105 Bethesda, MD 20892–8328, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research, 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 4, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6034 Filed 12–12–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, NACBIB January 2008.

Date: January 25, 2008.

Open: 8:30 a.m. to 1 p.m.

Agenda: Report from the Institute Director and other Institute staff and presentations of working group reports.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director, National Institute of Biomedical Imaging and Bioengineering, 6701 Democracy Blvd., Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: December 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6031 Filed 12–12–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 Advisory Council on Aging.

Date: January 29–30, 2008.

Closed: January 29, 2008, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: January 30, 2008, 8 a.m. to 2:45 p.m.

Agenda: Call to order; Task Force on Minority Aging Research Report; Working Group on Program Report; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barr@nia.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement of the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: December 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6032 Filed 12–12–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 meetings.

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 Environmental Health Sciences Special Emphasis Panel Environmental Modulators of Skeletal Health.

Date: January 14, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Durham at Southpoint, 7807 Leonardo Drive, Durham, NC 27713.

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6035 Filed 12–12–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Viral Pathogenesis.

Date: January 8, 2008.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Michelle M. Timmerman, PhD., Scientific Review Officer, Scientific Review Program, National Institutes of Health/NIAID, Room 3258, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6036 Filed 12–12–07; 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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.
Date: January 17–18, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Washington, 1400 M Street, NW., Washington, DC 20005.
Contact Person: Tamizchelvi Thyagarajan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *Tthyagar@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.
Date: January 24–25, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Edwin C. Clayton, PhD., Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.
Date: January 25–26, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Monterey, 350 Calle Principal, Monterey, CA 93940.
Contact Person: Bahiru Gametchu, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Risk and Disease Prevention Study Section.
Date: January 28–29, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, 501 Geary Street, San Francisco, CA 94102.
Contact Person: Martha Faraday, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Pregnancy and Neonatology Study Section.
Date: January 28–29, 2008.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Michael Knecht, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Cognitive Neuroscience Study Science.
Date: January 29, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Michael A. Steinmetz, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Biochemistry and Biophysics of Membranes Study Section.
Date: January 29–30, 2008.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Nuria E. Assa-Munt, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Developmental Therapeutics Study Section.
Date: January 31–February 1, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Sharon K. Gubanich, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Neural Systems Study Section.
Date: January 31–February 1, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Long Beach Hotel, 111 East Ocean Boulevard, Long Beach, CA 90802.
Contact Person: Geoffrey G. Schofield, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Vaccines Against Microbial Diseases Study Section.
Date: January 31–February 1, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jian Wang, MD, Phd, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–1235, *wangjia@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.
Date: January 31–February 1, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Jonathan K. Ivins, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function E Study Section.
Date: January 31–February 1, 2008.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Nitsa Rosenzweign, Phd., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.
Date: January 31–February 1, 2008.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.
Contact Person: Pat Manos, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *manospa@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated

Review Group, Neurogenesis and Cell Fate Study Section.

Date: January 31–February 1, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Lawrence Baizer, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizeri@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Enabling Bioanalytical and Biophysical Technologies Study Section.

Date: January 31–February 1, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Vonda K. Smith, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@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: December 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6033 Filed 12–12–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0107]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice announces a teleconference of the National Offshore Safety Advisory Committee (NOSAC). The purpose of the teleconference is for NOSAC to vote on accepting the Subcommittee report ''MARPOL Annex II Application to new Offshore Supply Vessels in International Service.''

DATES: The teleconference call will take place on Monday, January 14, 2008, from 10 a.m. to 11 a.m. EST.

ADDRESSES: Members of the committee and public may participate by coming to Room 1303, U.S. Coast Guard Headquarters; 2100 Second Street, SW., Washington, DC 20593–0001. We request that members of the public who plan to attend this meeting notify Mr. Jim Magill at 202–372–1414 so that he may notify building security officials. This notice and the report is available on our online docket, USCG–2007–0107, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: CDR John Cushing, Executive Director of NOSAC, telephone 202–372–1410 or Mr. Jim Magill, Assistant Executive Director of NOSAC, telephone 202–372–1414.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). Committee members and members of the public may participate by dialing 1–888–220–3046 on a touch-tone phone. You will then be prompted to enter your ''participant code number,'' which is 2556102#. Please ensure that you enter the # mark after the participant code. Public participation is welcomed; however, the number of teleconference lines is limited, and lines are available first-come, first-served.

Agenda of Meeting

The agenda for the Monday, January 14th, 2008 teleconference Committee meeting is as follows:

10 a.m.–10:05 a.m.

Welcome and Opening Remarks—NOSAC Chairman Mr. Chuck Bedell.

10:05 a.m.–10:30 a.m.

Open discussion concerning the Subcommittee report ''MARPOL Annex II Application to new Offshore Supply Vessels in International Service.''

10:30a.m.–10:45 a.m.

Public comment period.

10:45 a.m.–11 a.m.

NOSAC vote on the report ''MARPOL Annex II Application to new Offshore Supply Vessels in International Service.''

11 a.m.

Adjourn.

This agenda is subject to change and the meeting may adjourn early if all Committee business has been completed.

Public Participation

The Chairman of NOSAC is empowered to conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During its teleconference, the Committee welcomes public comment. The Committee will make every effort to hear the views of all interested parties, including the public. Written comments may be submitted on or before the day of the teleconference (SEE **ADDRESSES**).

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 Mr. Magill as soon as possible.

Dated: December 6, 2007.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E7–24127 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Port of Los Angeles/Long Beach, CA

AGENCY: Transportation Security Administration, United States Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Port of Los Angeles/Long Beach, CA.

DATES: TWIC enrollment in Los Angeles/Long Beach will begin on December 12, 2007.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *www.regulations.gov*;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South

12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov*.

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Port of Los Angeles/Long Beach, CA. Enrollment in Los Angeles/Long Beach will begin on December 12, 2007. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Los Angeles/Long Beach, including those in the Port of Los Angeles/Long Beach must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic*.

Issued in Arlington, Virginia, on December 6, 2007.

Stephen Sadler

Director, Maritime and Surface Credentialing, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E7–24184 Filed 12–12–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–104]

Notice of Submission of Proposed ; Information Collection to OMB; Public Housing 5-Year and Annual PHA Plan; Correction

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice, Correction.

SUMMARY: This notice was previously published on November 20, 2007, and is being republished to extend the comment period until December 31, 2007. The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

PHA's are required to submit annual and 5-Year Plans to HUD as required by section 5A of the United States Housing Act of 1937 (42 U.S.C.1437c–1). The purpose of the plan is to provide a framework for local accountability and a means by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

DATES: *Comments Due Date:* December 31, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0226) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental PRA Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: On November 20, 2007 (72 FR 9348), this notice informed the public that the U.S. Department of Housing and Urban Development (HUD) would be submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Accordingly, FR Doc. E7–22700, published on November 20 2007, is being republished to extend the comment period until December 31, 2007.

This Notice Also Lists the Following Information:

Title of Proposal: Public Housing 5-Year and Annual PHA Plan.

OMB Approval Number: 2577–0226.

Form Numbers: HUD 50075, HUD 50075.1, HUD 50075.2, HUD 50077, HUD 50070, HUD 50071, SF LLL, and SF LLL–A.

Description of the Need for the Information and Its Proposed Use: PHA's are required to submit annual and 5–Year Plans to HUD as required by section 5A of the United States Housing Act of 1937 (42 U.S.C.1437c–1). The purpose of the plan is to provide a framework for local accountability and a means by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	4,139	1		12.68		52,512

Total Estimated Burden Hours: 52,512.

Status: Revision of a currently approved information collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 7, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–24106 Filed 12–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–101]

HUD's Affordable Communities Award

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for HUD's Affordable Communities Award, a non-monetary award, to be presented annually, to acknowledge and honor those communities at the forefront in expanding affordable housing opportunities by reducing regulatory barriers and creating an environment supportive of the construction and rehabilitation of affordable housing. This award was designed and developed as part of HUD's Affordable Communities Initiative.

DATES: *Comments Due Date: January 14, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–0020) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title Of Proposal: HUD's Affordable Communities Award.

OMB Approval Number: 2501–0020.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Application for HUD's Affordable Communities Award, a non-monetary award, to be presented annually, to acknowledge and honor those communities at the forefront in expanding affordable housing opportunities by reducing regulatory barriers and creating an environment supportive of the construction and rehabilitation of affordable housing. This award was designed and developed as part of HUD's Affordable Communities Initiative.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	30	1		8		240

Total Estimated Burden Hours: 240.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 7, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–24126 Filed 12–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–38]

Notice of Proposed Information Collection: Comment Request; Monthly Delinquent Loan Reports

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 11, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed

information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Monthly Delinquent Loan Reports.

OMB Control Number, if applicable: 2502–0060.

Description of the need for the information and proposed use: Form HUD–92068–A is submitted electronically by mortgagees and is used to report information into HUD's Single Family Default Monitoring System (SFDMS), which provides reports that reflect default and foreclosure information. Used to identify potential areas of risk to the insurance fund.

Agency form numbers, if applicable: HUD92068–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of annual burden hours is 7200. The number of respondents is 240, the number of responses is 2880, the frequency of response is per month, and the burden hour per response is 1.50 hrs if submitted via EDI or 3.50 hrs. if submitted via FHAC.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 7, 2007.

Frank L. Davis

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E7–24132 Filed 12–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–37]

Notice of Proposed Information; Collection: Comment Request; Technical Suitability of Products Program Section 521 of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 11, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jason McJury, Structural Engineer, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2866 x 2691 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Technical Suitability of Products Program Section 521 of the National Housing Act.

OMB Control Number, if applicable: 2502–0313.

Description of the need for the information and proposed use: This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act.

Agency form numbers, if applicable: HUD 92005.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 2,220; the number of respondents is 50 generating approximately 50 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 44 hours.

Status of the proposed information collection: Request for extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 7, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E7–24133 Filed 12–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5004–FA–05]

Announcement of Funding Awards for the Emergency Capital Repair Grants Program Fiscal Year 2007

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of Emergency Capital Repair Grant funding decisions made by the Department in FY 2007. This announcement contains the names of

the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mr. Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, visit the HUD Website at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Emergency Capital Repair Grants Program is authorized by Section 202(b) of the Housing Act of 1959 (12 U.S.C. 1701q-2). Section 202b was amended to provide grants for ''substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structures, common areas or individual dwelling units.''

On May 22, 2006, at 71 FR 29538, HUD published a notice, entitled ''Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly,'' which announced the availability of approximately $30 million in grant funds to make emergency capital repairs to eligible multifamily projects designated for occupancy by elderly tenants. HUD accepted applications on a first-come, first-serve basis and awarded emergency capital repair grants until available amounts were expended. A notice of funding awards announcing Emergency Capital Repair Grant funding decisions made by the Department in Fiscal Year 2006 was published on April 3, 2007, at 72 FR 15896. The amount awarded in FY 2006 was less than the total amount made available in the May 22, 2006, notice, and the Department has continued to make awards on a first-come, first-serve basis in FY 2007. This notice announces the additional funding decisions under the May 22, 2006, notice made by the Department in Fiscal Year 2007.

The Catalog of Federal Domestic Assistance number for this program is 14.315.

The Emergency Capital Repair Grant is designed to provide funds to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities designated for occupancy by elderly tenants. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget and other project resources.

A total of $12,454,999 was awarded to 53 projects and 5,698 units. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: November 20, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

APPENDIX A.—EMERGENCY CAPITAL REPAIR GRANT AWARDEES FY 2007

Name of owner/sponsor	Name of development	City	State	Number of units	Dollar amount awarded	Repairs funded
Essex Manor, Inc	Essex Manor	Saginaw	MI	75	$187,980	Replaced the roof and the roof ventilation system, replaced electrical outlets battery operated smoke detectors.
Saginaw Westchester Village, Inc	Saginaw Westchester Village.	Saginaw	MI	156	23,964	Replaced the existing GFCI outlets and smoke alarms.
Saginaw Westchester Village, Inc	Westchester Village North.	Saginaw	MI	101	2,333	Replaced the existing GFCI outlets and smoke alarms.
Tucson Armory Park Foundation, Inc.	Armory Park Apartments.	Tucson	AZ	140	417,311	Replaced two unreliable elevators.
The Bernadine Apartments, Inc	The Bernadine Apartments.	Syracuse	NY	216	105,800	Repaired the leaking roof and replaced the failing alarm system.
Marien-Heim of Sunset Park H. D. F. C.	Marien-Heim of Sunset Park.	Brooklyn	NY	169	145,832	Replaced the failing exterior building facade.
Encino Terrace	Encino Terrace	Albuquerque	NM	153	499,520	Repaired to correct the existing smoke partitioning problems.
Exchange Sunshine Home Corporation.	Exchange Sunshine Home.	Copperas	TX	50	15,908	Replaced the heating and cooling units.
Overlook Senior Citizens Housing of Marion Co., Inc.	Dogwood Terrace II	Sweetwater	TN	25	54,761	Replaced the roofs on six buildings and repaved the existing driveway and parking areas.
Senior Housing, Inc	Simon C. Fireman Community.	Randolph	MA	160	83,564	Repaired the facility's heating system.
Winter Valley Residences, Inc	Winter Valley Residences.	Milton	MA	128	475,000	Corrected serious water drainage problems.
Metropolitan Detroit Baptist Manor, Inc.	Detroit Baptist Manor—Alpha.	Farmington Hills	MI	101	62,637	Replaced the cracked and broken sidewalks and parking lots.

APPENDIX A.—EMERGENCY CAPITAL REPAIR GRANT AWARDEES FY 2007—Continued

Name of owner/sponsor	Name of development	City	State	Number of units	Dollar amount awarded	Repairs funded
Granada Trades Council Housing, Inc.	Granada Homes	San Antonio	TX	250	496,701	Replaced the front entry roof, back up chiller, pipe insulation, and two elevators.
Methouse Inc	Methouse	Munhall	PA	113	209,337	Repaired the balconies and window lintels.
Rainbow Place Apartments Limited Partnership.	Rainbow Group	Cleveland	OH	181	256,442	Replaced the roof, heating and ventilation system, standby electrical generator and windows.
United Church Residences of Bedford, OH, Inc.	South Haven Woods.	Bedford	OH	60	124,416	Replaced the roof and heating and ventilation (HVAC) system.
Lawrence County Building Trades, Inc.	Riverside Apartments.	New Castle	PA	128	155,264	Replaced the fire alarm system, emergency generator and unit doors.
National Council of Senior Citizens.	I.W. Abel Place	Pittsburgh	PA	51	113,580	Replaced the windows.
National Church Residences of Cuyahoga Falls, OH.	Portage Trail Village.	Cuyahoga Falls	OH	220	155,500	Replaced the central water heater.
First Baptist Housing of Bridgeport, Inc.	Washington Heights Apartments.	Bridgeport	CT	120	411,464	Repaired the building exterior masonry and replaced the elevators.
St. Paul Apartments, Inc	St. Paul Apartments.	Macon	GA	215	195,340	Replaced major plumbing fixtures and the elevator doors.
Flint Heights Senior Citizen Apartments Association.	Flint Heights	Flint	MI	163	439,711	Repaired the building's exterior caulking, replaced roof, and repaired and resurfaced parking and drive.
Westminster Manor Inc	Westminster Manor	San Diego	CA	156	255,258	Replaced the elevator.
Kivel Manor	Kivel Manor	Phoenix	AZ	118	192,360	Replaced the elevator.
Kivel Geriatric Center	Kivel Manor East	Phoenix	AZ	73	117,894	Replaced the elevator.
Kivel Manor West	Kivel Manor West	Phoenix	AZ	65	208,078	Replaced the elevator.
Cross-Lines Towers Inc	Crossline Towers	Kansas City	KS	126	500,000	Replaced the existing heating system.
New Horizons Assistance Corporation.	New Horizons Group Home.	Kansas City	MO	35	38,800	Repaired the foundation.
Lutheran Retirement Homes, Inc	St. John's Lutheran Retirement Home.	Billings	MT	112	500,000	Replaced the boiler system.
Columbian Tower Development Corp.	Columbian Tower	Hoboken	NJ	135	86,990	Replaced all heating zone valves and flow restrictors.
Union Baptist Community Housing Corp.	Herring Manor	Wilmington	DE	40	178,111	Replaced the roof.
Bethany Villa Housing Association, Inc.	Bethany Villa I	Troy	MI	119	239,564	Replaced the boilers, domestic hot water tanks, concrete sidewalks, resurfaced the parking areas and service drive and repaired the roofs.
Bethany Villa Housing Association, Inc.	Bethany Villa II	Troy	MI	119	294,606	Replaced the boilers, domestic hot water tanks, concrete sidewalks, resurfaced the parking areas and service drive and repaired the roofs.
Housing for Independent Living, Inc.	Carver Elderly Housing.	Carver	MA	40	500,000	Replaced the exterior siding, stairs, windows and doors.
Bridgeport Rotary Club Housing Corporation.	Laurelwood Place Apartments.	Bridgeport	CT	100	315,240	Replaced two elevators.
Travis Towers, Inc	Travis Towers	Jacksonville	TX	87	262,522	Replaced the fire alarm system and repaired the elevator.
Loving Tender Care (LTC), Inc	Gillbeke Apartments.	Marion	IN	20	157,606	Replaced leaking roof, siding, and windows.
East Orange Senior Housing Association.	Coppergate House	East Orange	NJ	128	420,000	Replaced the boiler and ventilation system.

APPENDIX A.—EMERGENCY CAPITAL REPAIR GRANT AWARDEES FY 2007—Continued

Name of owner/sponsor	Name of development	City	State	Number of units	Dollar amount awarded	Repairs funded
Presbyterian Home at Plainfield, Inc.	Plainfield Tower West.	Plainfield	NJ	154	64,587	Replaced the existing two elevators.
Barbara L. Andrews Memorial Housing Association.	Andrews Way	Raytown	MO	10	6,000	Replaced failing plumbing system.
Overlook Senior Citizens Housing of Loudon Co., Inc.	Dogwood Terrace III.	Lenoir City	TN	20	83,461	Repaired a water line, repaved the driveway, and replaced the air conditioning/heating systems.
Mercy Douglas Human Services Residence Corp.	Mercy Douglas Residences.	Philadelphia	PA	61	489,752	Replaced the deteriorating concrete slab and remediated soil conditions beneath the building.
Century Homes for Elderly, Inc	Springbrook Apartments.	Vonore	TN	24	21,037	Replaced deteriorating and leaking roof system.
Beaches Elderly Housing Corporation.	Pablo Hamlet	Jacksonville Beach.	FL	104	74,226	Replaced deteriorating and leaking windows.
Schnurman House, Inc	Schnurman House Apartments.	Mayfield Heights.	OH	198	290,000	Replaced the roofs.
Saraland Manor Inc	Saraland Manor	Gulfport	MS	101	498,777	Replaced a fire alarm and emergency call system, replaced the roof condenser units and repaired the elevator doors.
Omni-Governor, Inc	The Governor Apartments.	Providence	RI	57	425,327	Refurbished the existing chimney, replaced roof tiles, and repointed the exterior wall surface.
Jewish Federation Housing, Inc	Federation Towers	Miami Beach	FL	114	402,900	Replaced two malfunctioning elevator cars.
Labelle Towers	Labelle Towers	Highland Park	MI	214	338,657	Replaced a 35-year-old chiller.
Villa Del Sol Senior Housing, Inc	Villa Del Sol Senior Housing.	Sunland Park	NM	30	55,838	Repaved buckling pavement, repaired heaving sidewalks, and repaired failing storm drainage systems.
Chaparral Senior Housing, Inc	Chaparral Senior Housing.	Las Cruces	NM	40	98,543	Replaced faulty-inoperable windows, corrected flooding problems and repaired guttering systems on the roof.
Elm Manor Homes, Inc	Elm Manor Homes	Roanoke	VA	23	284,854	Replaced parts of an unreliable elevator, windows, the parapet cap, damaged vinyl siding, and failed retaining wall.
Redeemer Lutheran Housing, Inc	Luther Acres	Vineland	NJ	100	421,646	Replaced an inoperable corridor ventilation system.

[FR Doc. E7–24130 Filed 12–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5157–N–03]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: David E. Hintz, Secretary to the Mortgagee Review Board, 451 Seventh Street, Room B–133 Portals 200, SW., Washington, DC 20410–8000, telephone: (202) 708–3856, extension 3594. A Telecommunications Device for Hearing- and Speech-Impaired

Individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub.L. 101–235, approved December 15, 1989), requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board (Board). In compliance with the requirements of Section 202(c)(5), this notice advises of administrative actions that have been taken by the Board from April 27, 2007 to August 31, 2007.

1. America's Mortgage Resource, Metairie, LA [Docket No. 06–6031–MR]

Action: Settlement Agreement signed August 24, 2007. Without admitting liability or fault, America's Mortgage Resource agreed to pay HUD $64,000. America's Mortgage Resource also agreed that it will not approve any HUD/FHA-insured mortgages in which the borrower is receiving a gift from a downpayment assistance provider unless that provider meets HUD's existing requirements for gift donors, including obtaining 501(c)(3) status from the Internal Revenue Service.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where America's Mortgage Resource: Failed to ensure that borrowers received gift funds from acceptable sources; and failed to adopt a Quality Control Plan in accordance with HUD/FHA requirements.

2. Aspen Home Loans, LC, American Fork, UT [Docket No. 06–6028–MR]

Action: On August 16, 2007, the Board issued a letter to Aspen Home Loans, LC (Aspen) immediately withdrawing its HUD/FHA approval for five years.

Cause: The Board took this action based on the following violations of HUD/FHA requirements where Aspen failed to comply with the Board's directive. In a letter dated May 14, 2007, the Board put Aspen on a one year probation and imposed a $6,500 civil money penalty and, directed Aspen to: Provide the Board with Aspen's Senior Management Quality Control reports performed for the preceding six months within thirty days of Aspen's receipt of the Board's Notice letter; a copy of Aspen's current acceptable Quality Control Plan within fifteen days of the Aspen's receipt of the Board's Notice letter; and, copies of Aspen's Senior Management Quality Control reports for the following calendar year, completed quarterly, within thirty days of the end of each quarter.

3. Capital Mortgage Associates, LLC, North Haven, CT [Docket No. 07–7003–MR]

Action: Settlement Agreement signed August 31, 2007. Without admitting liability or fault, Capital Mortgage Associates, LLC (Capital) agreed to make an administrative payment to HUD in the amount of $22,500. Capital also agreed to refund borrowers unallowable fees identified in two loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where Capital: Allowed an unapproved branch to originate HUD/FHA loans in violation of HUD/FHA requirements; failed to ensure that borrowers were not charged unallowable fees; and failed to adopt a Quality Control Plan in accordance with HUD/FHA requirements.

4. Citybank, Puyallup, WA [Docket No. 07–7013–MR]

Action: Settlement Agreement signed August 14, 2007. Without admitting liability or fault, Citybank agreed to waive all insurance benefits or indemnify HUD on two loans. Citybank also agreed to pay HUD an administrative payment in the amount of $17,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where Citybank: Failed to verify the source of funds for a gift used by the borrower to meet his/her minimum investment; failed to ensure that borrowers met minimum credit requirements; and failed to reconcile discrepancies in appraisals and/or accepted incomplete appraisal reports.

5. Davis-Penn Mortgage Company, Houston, TX [Docket No. 07–7005–MR]

Action: Settlement Agreement signed May 15, 2007. Without admitting liability or fault, Davis-Penn Mortgage Company (Davis-Penn) agreed to pay HUD an administrative payment in the amount of $83,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the servicing of HUD/FHA-insured loans where Davis-Penn: Failed to report default on two multifamily insured mortgage loans; and failed to elect to assign two multifamily insured mortgage loans that were in default.

6. Mac-Clair Mortgage Corporation, Flint, MI [Docket No. 07–7017–MR]

Action: Settlement Agreement signed August 31, 2007. Without admitting wrongdoing or fault, Mac-Clair Mortgage Corporation (Mac-Clair) agreed to pay HUD an administrative payment in the amount of $10,000. Mac-Clair also agreed to pay the entire debt owed to HUD on five Settlement Agreements in the amount of $915,627.

Cause: The Board took this action because Mac-Clair failed to comply with the terms of the five Settlement Agreements.

7. Pennsylvania Housing Finance Agency, Harrisburg, PA [Docket No. 06–6022–MR]

Action: Settlement Agreement signed May 29, 2007. Without admitting liability or fault, Pennsylvania Housing Finance Agency (PHFA) agreed to pay HUD an administrative payment in the amount of $23,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the servicing of HUD/FHA-insured loans where the PHFA: Failed to report a default in one multifamily insured mortgage loan in accordance with HUD/FHA requirements; failed to timely elect whether to assign the multifamily insured mortgage loan that was in default; and failed to assign the mortgage to HUD within 30 days from the date of the election to assign the mortgage to HUD.

8. Synergy Mortgage Corporation, Waco, TX [Docket No. 06–6021–MR]

Action: Settlement Agreement signed August 14, 2007. Without admitting liability or fault, Synergy Mortgage Corporation (Synergy) agreed to pay HUD an administrative payment in the amount of $410,000. Synergy also agreed that Synergy, Synergy Bank and Premier Bancshares, Inc., and any existing or newly created subsidiaries or affiliates of these entities shall not seek HUD/FHA approval as mortgagee for a period of five years from the effective date of the Settlement Agreement.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where Synergy: Failed to properly document, and calculate income; omitted and understated liabilities for loan qualification; failed to properly verify the source and adequacy of funds for the borrower's minimum required investment; failed to ensure property

eligibility for HUD/FHA mortgage insurance; closed loans in excess of the maximum allowable amount by failing to consider inducements to purchase in computing the mortgage amount and failing to resolve conflicting information regarding the sales price; and approved a mortgage loan with an excessive debt to income ratio without adequate compensating factors.

9. Tranah Asset Management Corporation, San Antonio, TX [Docket No. 06–6030–MR]

Action: Settlement Agreement signed April 27, 2007. Without admitting liability or fault, Tranah Asset Management Corporation (Tranah) agreed to pay HUD an administrative payment in the amount of $45,000.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in the origination of HUD/FHA-insured loans where Tranah permitted a debarred mortgagee to participate in the HUD/FHA mortgage insurance program.

10. Wall Street Financial Corporation, Fairfield, NJ [Docket No. 04–4264–MR]

Action: Settlement Agreement signed May 17, 2007. Without admitting liability or fault, Wall Street Financial Corporation (Wall Street) agreed to pay HUD an administrative payment in the amount of $19,500. Wall Street also agreed to refund unallowable fees identified in 50 loans to mortgagors within 30 days of the effective date of the Settlement Agreement.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans where Wall Street: Approved mortgages with debt-to-income ratios that exceeded HUD/FHA standards without adequate compensating factors in nine mortgages; failed to adequately document the source of funds used for the downpayment or closing costs in one mortgage; failed to ensure that borrowers whom Wall Street charged a commitment fee, executed a Commitment Agreement guaranteeing discount points and/or interest rates at least fifteen days prior to closing; and charged unallowable fees for title review by an attorney, and/or overcharged for obtaining credit reports.

Dated: December 6, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal, Housing Commissioner.

[FR Doc. E7–24113 Filed 12–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of Enhancement of Survival and Incidental Take Permits.

SUMMARY: Between June 1, 2005, and September 30, 2007, the Pacific Region of the Fish and Wildlife Service (Service) issued 18 permits for enhancement of survival or incidental take of threatened and endangered species. These permits were issued pursuant to sections 10(a)(1)(A) and 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Copies of the permits and associated decision documents are available upon request.

ADDRESSES: Documents are available from the U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, Oregon 97232; facsimile (503) 231–6243. Charges for copying, shipping and handling may apply.

FOR FURTHER INFORMATION CONTACT: Please contact Shelly Sizemore, Administrative Assistant, at the above address and facsimile number or by telephone at (503) 231–2194.

SUPPLEMENTARY INFORMATION: Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the take of wildlife species listed as endangered or threatened. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. We may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22.

Although not required by law or regulation, it is our regional policy to notify the public of permits issued for enhancement of survival or incidental take under Habitat Conservation Plans, Safe Harbor Agreements, or Candidate Conservation Agreements with Assurances. Within the Pacific Region of the Service, between June 1, 2005, and September 30, 2007, we issued 15 permits for enhancement of survival and 3 permits for incidental take of threatened and endangered species subject to certain conditions set forth therein, pursuant to sections 10(a)(1)(A) and 10(a)(1)(B) of the Act. The enhancement of survival permits are associated with Safe Harbor Agreements or Candidate Conservation Agreements with Assurances. The incidental take permits are associated with Habitat Conservation Plans. We issued each permit after determining that: (1) The permit application was submitted in good faith; (2) all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of listed species; and (3) the permit was consistent with the purposes and policy set forth in the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

HABITAT CONSERVATION PLANS (HCP)

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date	Name of approved plan or agreement
TE118901–0	Kaheawa Wind Power, LLC	70 FR 57888; October 4, 2005	January 30, 2006	HCP for the Kaheawa Wind Generation Facility, Ukumehame, Maui, HI.
TE121202–0	Washington Department of Natural Resources.	70 FR 7245; February 11, 2005	May 26, 2006	Washington Department of Natural Resources Forest Practices HCP.
TE133608–0	Duane and Darlene Schwisow	71 FR 61501; October 18, 2006	April 10, 2007	HCP for the Schwisow Development in Adams County, ID.

SAFE HARBOR AGREEMENTS (SHA)

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date	Name of approved plan or agreement
TE106219–0	Chevron	69 FR 52027; August 24, 2004	September 23, 2005	SHA with Chevron Hawaii Refinery at James Campbell Industrial Park for management of the Hawaiian stilt and Hawaiian coot, Oahu, HI.
TE134317–0	Peter Lancaster	71 FR 52816; September 7, 2006	March 9, 2007	Columbia Basin pygmy rabbit template SHA.
TE134335–0	Billingsley Ranch	.....do	.....do	Do.
TE144773–0	Eric E. Long	72 FR 20557; April 25, 2007	August 8, 2007	Do.
TE146604–0	Sagebrush Flats Farm	.....do	.....do	Do.
TE146607–0	ABS Farms LLC	.....do	.....do	Do.
TE146612–0	Raymond J. Mayer	.....do	.....do	Do.
TE146616–0	Rimrock Meadows Assoc	.....do	.....do	Do.
TE150086–0	Evans Bothers Inc	.....do	.....do	Do.
TE154037–0	The Nature Conservancy (TNC)	71 FR 65830; November 9, 2006	June 18, 2007	Oregon silverspot butterfly central coast programmatic SHA with TNC.
TE162242–0	Big Island Resource Conservation and Development Council.	71 FR 78452; December 29, 2006	September 12, 2007	Programmatic SHA covering Hawaiian goose, Hawaiian duck, Hawaiian moorhen, Hawaiian coot, and Hawaiian stilt for participants of USDA Farm Bill Conservation Programs.
TE162243–0	Oahu Resource Conservation and Development Council.	.....do	.....do	Do.
TE162244–0	Tri-Isle Resource Conservation and Development Council.	.....do	.....do	Do.
TE162245–0	Garden Island Resource Conservation and Development Council.	.....do	.....do	Do.

Symbol used in the three right columns: ''.....do...''—(ditto) indicates the entry is the same as the column entry directly above.

CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES (CCAA)

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date	Name of approved plan or agreement
TE109603–0	State of Idaho Department of Lands	71 FR 5358; February 1, 2006	September 29, 2006	CCAA for the Columbia spotted frog at Sam Noble Springs, Owyhee County, ID.

Copies of each permit, the accompanying Habitat Conservation Plan, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances, and associated documents are available upon request. Decision documents for each permit include a Finding and Recommendation; a Biological Opinion; and either a Record of Decision, Finding of No Significant Impact, or an Environmental Action Statement. Associated documents may also include an Implementing Agreement, Environmental Impact Statement, or Environmental Assessment, as applicable.

Dated: November 14, 2007.

David J. Wesley,

Deputy Regional Director, Portland, Oregon.

[FR Doc. E7–24148 Filed 12–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

California Aqueduct Operation and Maintenance Project in Kings and Kern County, San Joaquin Valley, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that the California Department of Water Resources San Joaquin Field Division (Applicant) has applied for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We are considering the issuance of a 30-year permit to the Applicant that would authorize take of 20 species incidental to the Applicant's proposed operation and maintenance activities on sections of the California Aqueduct and Coastal Branch Phase 1 canal, as well as seven pumping plants and two Operations and Maintenance centers within the San Joaquin Field Divisions jurisdiction in Kern and Kings County, California. These activities within the 11,816-acre project area would result in the loss of up to 360 acres of permanent habitat loss to covered species habitat and 935 acres of temporary impacts to covered species habitat.

We request comments from the public on the permit application and an Environmental Assessment. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of the covered species.

DATES: We must receive your written comments on or before February 11, 2008.

ADDRESSES: Please address written comments to Lori Rinek, Chief, Conservation Planning and Recovery Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. You also may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Peter Cross, Chief Endangered Species Division, or Lori Rinek, Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the individuals named above [see **FOR FURTHER INFORMATION CONTACT**]. Documents also will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**].

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act to include the following activities: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. We may, under limited circumstances, issue permits to authorize incidental take (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for endangered are found in 50 CFR 17.22.

The Applicant is seeking a permit for take of five federally listed animal species: the endangered San Joaquin kit fox (*Vulpes macrotis mutica*), blunt nosed leopard lizard (*Gambelia sila*), giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*dipodomys nitratoides nitratoides*), and the Buena Vista Lake shrew (*Sorex ornatus relictus*). The proposed permit would also authorize future incidental take of six currently unlisted animal species should any of these species become listed under the Act during the life of the permit: western burrowing owl (*Athene cunicularia hypugea*), Swainson's hawk (*buteo swainsoni*), San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), white-tailed kite (*Elanus leucurus*) and western spadefoot (*Spea hammondii*). The following listed and unlisted plant species are also proposed to be included on the permit: the endangered Bakersfield cactus (*Opuntia basilaris var. treleasei*), and the unlisted lesser saltscale (*Atriplex miniscula*), recurved larkspur (*Delphinium recurvatum*), Lost Hills crownscale (*atriplex vallicola*), Kernmallow (*Eremalche kernensis*), San Joaquin woollythreads (*Monolopia congdonii*), oil neststraw (*Stylocline citroleum*), Bakersfield smallscale (*Atriplex tularensis*), Bakersfield cactus (*opuntia basilaris var. treleasei*) should any of these species become listed under the Act during the life of the permit. Take of listed plant species is not prohibited under the Act and cannot be authorized under a section 10 permit. However, plant species may be included on the permit in recognition of the conservation benefits provided for them under the Plan. These species would also receive ''No Surprises'' assurances under the Service's ''No Surprises'' regulation (63 FR 8859). Collectively, the 20 listed and unlisted species are referred to as the ''covered species'' in the Plan.

The Applicant proposes to address potential impacts of the operation, maintenance, and use of the California Aqueduct right-of-way and pumping plants within the San Joaquin Field Division. The Plan would cover the following activities: (1) Operation and maintenance activities (maintenance of embankments, roads, drainage and drainage structures, fences, and buildings and grounds; dredging and spoils removal; installation, monitoring and maintenance of observation wells; maintenance of turnout facilities, utilities and recreational facilities; and minor new construction); and (2) establishment and management of conservation areas to compensate for impacts on covered species habitat. Project activities would result in 360 acres of permanent habitat loss to covered species habitat and 935 acres of temporary impacts to covered species habitat.

The Applicant proposes to implement specific on-site measures to avoid and minimize take and associated adverse project impacts to covered species. Additionally, the Applicant proposes to mitigate for take of covered species by conserving approximately 567 acres of land located at three of their pumping plants within the Plan area.

The Service's Environmental Assessment considers the environmental consequences of five alternatives. The Proposed HCP Project Alternative consists of the issuance of the incidental take permit and implementation of the Plan and Implementing Agreement. With Alternative 2 (Operation to Breakdown), maintenance would be deferred until an emergency condition resulted, rather than performed routinely or for minor damage. With Alternative 3 (Fenceline-to-fenceline Disturbance), the entire right-of-way along the canals would be cleared of vegetation. With Alternative 4 (Alternative Maintenance Procedures), various methods of road maintenance, rodent control, vegetation control, and erosion control that were previously considered and rejected would be selected and used to develop this alternative. With the No Action alternative, the HCP would not be implemented and the applicant would apply for permits each time take occurred.

Public Review

We invite the public to review the Plan, Implementing Agreement and Environmental Assessment during a 60-day public comment period (see **DATES**). 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.

We provide this notice pursuant to section 10(a) of the Act and the regulations for implementing NEPA, as amended (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the covered species. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: December 7, 2007.

Ken McDermond,

Deputy Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E7–24135 Filed 12–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct a Public Scoping Meeting and Perform an Environmental Review for the Kaua'i Island Utility Cooperative Habitat Conservation Plan, Kaua'i Island, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) intends to conduct public scoping necessary to gather information to prepare an environmental assessment (EA) or environmental impact statement (EIS) (collectively referred to as ''environmental document'') for a Habitat Conservation Plan (HCP) being prepared by the Kaua'i Island Utility Cooperative (KIUC). The draft HCP is being prepared under section 10(a)(1)(B) of the Endangered Species Act (ESA). KIUC intends to apply for an incidental take permit under the ESA to authorize take of the federally endangered Hawaiian Petrel (*Pterodroma sandwichensis*), the federally threatened Newell's Shearwater (*Puffinus auricularis newelli*), and the Band-rumped Storm-Petrel (*Oceanodroma castro*), a Federal candidate for listing that could become listed during the term of the permit (collectively referred to as the ''Covered Species''). This notice is provided to (1) describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an environmental document; (3) announce the initiation of a public scoping period and the holding of a public scoping meeting; (4) obtain information to assist the Service in determining whether to prepare an EA or EIS; and (5) obtain suggestions and information on the scope of issues and alternatives to be addressed in the environmental document. Written comments will be accepted at a public meeting. In addition, written comments may be submitted by mail, facsimile transmission, or e-mail.

DATES: Written comments must be received on or before February 8, 2008. Oral or written comments may be submitted at a public scoping meeting to be held on January 23, 2008, from 6 p.m. to 8 p.m.

ADDRESSES: The public scoping meeting will be held at the Planning Commission Conference Room, Mo'ikeha Building, 4444 Rice Street, Līhu'e, Kaua'i, HI. Written comments, or questions related to the preparation of the environmental document, should be submitted to Jeff Newman, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, [or P.O. Box 50088], Honolulu, HI 96850–5000, fax (808) 792–9580, e-mail *Jeff_Newman@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Newman, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**), or phone (808) 792–9400.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Jeff Newman as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Statutory Authority

Section 9 of the ESA (16 U.S.C. 1538) and the implementing regulations prohibit the take of animal species listed as endangered or threatened. The term ''take'' is defined under the ESA (16 U.S.C. 1532(19)) as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. ''Harm'' is defined by Service regulation (50 CRF 17.3) to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering. However, under section 10(a)(1)(B) of the ESA, the Service may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32 and 50 CFR 17.22.

Section 10 of the ESA specifies the requirements for the issuance of incidental take permits to non-Federal entities. Any proposed take must be incidental to otherwise lawful activities and cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild. The impacts of such take must also be minimized and mitigated to the maximum extent practicable. To obtain an incidental take

permit, an applicant must prepare an HCP describing the impact that will likely result from the proposed taking, the measures for minimizing and mitigating the take, the funding available to implement such measures, alternatives to the taking, and the reason why such alternatives are not being implemented.

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to the proposed action is developed and considered in the Service's environmental review. Alternatives considered for analysis in an environmental document may include: Variations in the scope of covered activities; variations in the location, amount, and type of conservation; variations in permit duration; or a combination of these elements. In addition, the environmental document will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, and other environmental issues that could occur with the implementation of the proposed action and alternatives. For potentially significant impacts, the environmental document may identify avoidance, minimization and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Background

KIUC is a utility cooperative that generates and distributes electricity to the entire island of Kaua'i, Hawai'i. KIUC is developing a draft HCP in anticipation of applying for an incidental take permit. The proposed HCP will address the incidental take of three Covered Species associated with the operation and maintenance of KIUC's existing and anticipated facilities over a period of 50 years.

The three Covered Species are seabird species that breed on Kaua'i and feed on the open ocean. Each of the covered species spends a large part of the year at sea. Adults generally return to their colonial nesting grounds in the interior mountains of Kaua'i beginning in March and April, and depart beginning in September. Fledglings (i.e., young birds learning how to fly) fly from the nesting colony to the sea in the fall. Both adults and fledglings are known to occasionally collide with tall buildings, towers, powerlines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. These birds, and particularly fledglings, are also attracted to bright lights. Disoriented birds are commonly observed circling repeatedly around exterior light sources until they fall exhausted to the ground or collide with structures.

To address the issue that existing facilities currently impact the Covered Species, the Service and KIUC entered into a Memorandum of Agreement (MOA) in November 2002, and again in January 2005. Under the MOAs KIUC agreed to implement certain defined interim conservation measures (ICMs) to reduce the impacts of its facilities on seabirds while more long-term conservation actions are being developed in a HCP. Examples of ICMs implemented to date include: Shielding streetlights on KIUC power poles to minimize lighting disorientation of seabirds; and funding, enhancing and taking the lead on implementing the state's ''Save Our Shearwaters'' (SOS) program to rescue downed fledglings.

Proposed Plan

Since November 2002, KIUC has been working with the Service to develop a draft HCP, and also to simultaneously implement certain interim conservation measures to benefit the Covered Species. (Because the Covered Species are also subject to protection under the State of Hawai'i's own endangered species law, KIUC has also coordinated with the State's Department of Land and Natural Resources concerning the proposed HCP and the requirements for obtaining an incidental take license under state law.) Pursuant to NEPA, the Service conducted a public scoping meeting on the proposed HCP on September 16, 2004. Several comments received during that initial scoping period requested that additional information be made available regarding the proposed HCP, and that a second scoping meeting be convened after such additional information was provided. Since that time, KIUC has made progress in developing the draft HCP, based in part on consultations with the Service and the Hawai'i Department of Land and Natural Resources. As a result, the Service is now able to provide additional information about the likely scope and contents of the proposed HCP, and has determined that it is appropriate to conduct an additional round of public scoping under NEPA at this time.

The proposed HCP would cover KIUC activities within all areas on Kaua'i where its facilities (e.g., generating stations, power lines, utility poles, lights) are located. These activities include the continuing operation, maintenance, and repair of these and other existing facilities, and the construction, operation, maintenance and repair of certain new facilities, during the term of the incidental take permit.

The proposed HCP will describe the impacts of take associated with those activities on the Covered Species, and will propose a program to minimize and mitigate these impacts of that take on each of the Covered Species. Minimization measures in the proposed HCP may include: (i) Shielding KIUC's streetlights and facility lighting; (ii) installing bird diverter devices on certain power lines; (iii) developing and implementing lighting and power line performance standards; and (iv) implementing design modifications that minimize or eliminate the risk of seabird collisions (e.g., installing power lines below seabird flight altitudes, modifying power line arrays, or installing bird diverter devices). Mitigation measures may include implementation of an expanded SOS program—a program begun by the State of Hawai'i in the late 1970's to retrieve, evaluate, rehabilitate and release back to the wild downed seabirds during the fall fledging season. KIUC's proposed mitigation program may also include: breeding colony management actions aimed at reducing predation by invasive mammalian species; public education and outreach designed to reduce actions that contribute to bird downings; and additional scientific research.

Environmental Review

The Service will prepare an environmental document to analyze the environmental impacts associated with the potential issuance of the requested incidental take permit, and the associated implementation by KIUC of the HCP. A private contractor, Planning Solutions, Inc., will help to prepare the environmental document. The Service will supervise and be responsible for directing the consultant's work and for the scope and content of the document.

The environmental document will consider the proposed action and a reasonable range of alternatives. The Service currently anticipates that the alternatives may consist of the following: (1) A ''no action'' alternative, in which the requested incidental take permit would not be issued and the conservation program in the proposed HCP would not be implemented. However, this action is not considered to be viable because a permit for incidental take of the Covered Species is needed; (2) an ''under-grounding'' alternative in which some of KIUC's

power lines would be placed underground, thereby eliminating several sources of take of the Covered Species; and (3) a conservation program alternative that in addition to the proposed minimization measures would implement a mitigation program aimed principally at actively managing multiple seabird breeding colonies with the biological goal of increasing reproductive success and colony size. We invite comments and suggestions from all interested parties to ensure that the environmental document addresses a reasonable range of alternatives and that all significant issues related to them are identified and addressed.

Our environmental review will be conducted in accordance with the requirements of NEPA, its implementing regulations (40 CFR Parts 1500–1508), other applicable Federal laws and regulations, and applicable policies and procedures of the Service. This notice is being furnished in accordance with 40 CFR 1501.7 of the NEPA regulations to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the environmental document.

The public scoping meeting will allocate time for presentations by the Service and KIUC; this will be followed by a period for the submission of oral and/or written comments. All comments and materials received, including names and addresses of those presenting them, will become part of the administrative record and may be released to the public.

Dated: December 3, 2007.

David J. Wesley,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. E7–24149 Filed 12–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–140–08–1610–DP]

Notice of Public Meeting, Northwest Colorado Resource Advisory Council Subcommittees for the Glenwood Springs Resource Management Plan Revision

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Public 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) Northwest Colorado Resource Advisory Council (RAC) Subcommittee on the Glenwood Springs Resource Management Plan (RMP) Revision will meet as indicated below.

DATES: January 16 and 30, February 6 and 20, 2008; from 5 p.m. to 7:30 p.m.

ADDRESSES: The Glenwood Springs Subcommittee will meet at the Glenwood Springs Energy Office Conference Room, 2425 S. Grand Ave, Glenwood Springs, CO.

FOR FURTHER INFORMATION CONTACT: Brian Hopkins, Planning and Environmental Coordinator, 50629 Hwy. 6&24, Glenwood Springs, CO, telephone 970–947–2840.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in northwestern Colorado. A sub-committee has been formed under this RAC to advise it regarding the Glenwood Springs RMP Revisions. The 14 individuals on this subcommittee represent a broad range of interests and have specific knowledge of the subcommittee represent a broad range of interests and have specific knowledge of the Field Offices. Recommendations developed by these subcommittees will be presented formally for discussion to the NW RAC at publicly announced meetings of the full NW RAC. Both the subcommittee meetings and the full NW RAC meetings have public comment opportunities.

Dated: December 6, 2007.

Jamie Connell,

Glenwood Springs Field Manager, Lead Designated Federal Officer for the Northwest Colorado RAC.

[FR Doc. 07–6041 Filed 12–12–07; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–150–08–1110–AL]

Notice of Public Meetings, Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southwest Colorado RAC meetings will be held February 8, 2008; May 20, 2008; August 8, 2008; and November 14, 2008.

ADDRESSES: The Southwest Colorado RAC meetings will be held February 8, 2008, at the Dolores Field Office, located at 29211 Highway 184, Dolores, CO; May 30, 2008, at the Holiday Inn Express, located at 1391 S. Townsend Avenue, in Montrose, CO; August 8, 2008, at the Chipeta Sun Lodge, 304 S. Lena, in Ridgway, CO; and November 14, 2008, at the Fred R. Field Western Heritage Center Concrete Room, 275 S. Spruce Street, in Gunnison, CO.

The Southwest Colorado RAC meetings will begin at 9 a.m. and adjourn at approximately 4 p.m. Public comment periods regarding matters on the agenda will be at 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, BLM Uncompahgre field manager, 2505 S. Townsend Avenue, Montrose, CO; telephone 970–240–5300; or Melodie Lloyd, Public Affairs Specialist, 2815 H Road, Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion for all Southwest Colorado RAC meetings may include field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: November 29, 2007.

Barbara Sharrow,

Uncompahgre Field Manager, Designated Federal Officer, Southwest Colorado RAC.

[FR Doc. E7–24051 Filed 12–12–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–AL; GP8–0034]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: Thursday, January 17, 2008, at the BLM Spokane District Office, 1103 N. Fancher Rd., Spokane Valley, WA 99212.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m., end at approximately 3 p.m. The meeting will be open to the public and there will be an opportunity for public comments at 2:30 p.m. Discussion will focus on the status of projects of interest and identification of topics for future meetings.

FOR FURTHER INFORMATION CONTACT: Scott Pavey or Sandie Gourdin, BLM, Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA 99212, or call (509) 536–1200.

Dated: December 7, 2007.

Robert B. Towne,

District Manager.

[FR Doc. E7–24136 Filed 12–12–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–83051; 8–08807; TAS:14X5232]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 10 acres of public land in Clark County, Nevada. Gurdwara Baba Deep Singh, Inc. proposes to use the land for a church and fellowship hall.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands until January 28, 2008.

ADDRESSES: Mail written comments to the BLM Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Philip Rhinehart, (702) 515–5182.

SUPPLEMENTARY INFORMATION: In accordance with section 7 of the Taylor Grazing Act (43 U.S.C. 315f), and Executive Order No. 6910, the following described land in Clark County, Nevada, has been examined and found suitable for classification for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian, Nevada.

T. 22 S., R. 61 E.,
Sec. 30, SE ¼ SE¼ SE¼.

The area described contains 10 acres, more or less in Clark County.

In accordance with the R&PP Act, Gurdwara Baba Deep Singh, Inc. filed an application for the above-described 10 acres of public land to be developed for a church and fellowship hall. The plan also includes a patio to be constructed behind the church for outdoor ceremonies and church functions. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–83051 located at the BLM Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada.

The land is not needed for any Federal purpose. The lease/conveyance is consistent with the Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease/conveyance will be subject to:

1. Valid existing rights;

2. Right-of-way N–57053 for power line purposes granted to the Nevada Power Company, its successors or assigns, and for telephone line purposes granted to the Central Telephone Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. Rights-of-way N–60432 and N–65521 for road purposes, and N–77260 for road and drainage purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

4. Right-of-way N–76359 for water pipeline purposes granted to the Las Vegas Valley Water District, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

5. Right-of-way N–78847 for gas pipeline purposes granted to the Southwest Gas Corporation, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185 Sec. 28).

On December 13, 2007, the land described will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

Interested parties may submit comments involving the suitability of the land for a church and fellowship hall. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may submit comments regarding the specific use(s) proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office will be considered properly filed. Electronic mail, facsimiles, or telephone comments will not be considered properly filed. Comments, including names and addresses of respondents, will be available for public review. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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.

Any adverse comments will be reviewed by the BLM Nevada State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective February 11, 2008. The land will not be available for lease/conveyance until after the classification becomes effective.

(Authority: 43 CFR part 2740)

Dated: December 6, 2007.

Mark R. Chatterton,

Assistant Field Manager, Non-Renewable Resources, Las Vegas Field Office, NV.

[FR Doc. E7–24147 Filed 12–12–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plans, Final Environmental Impact Statement, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway, Wyoming

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 Winter Use Plans, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Winter Use Plans, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway, Wyoming. On November 20, 2007, the Director, Intermountain Region, approved the Record of Decision for the project.

Beginning in the winter of 2007–2008, the National Park Service (NPS) will begin to implement this Decision, although certain provisions will not apply until implementing regulations are promulgated, as described in the Revised Preferred Alternative (Alternative 7) contained in the FEIS issued on October 5, 2007. The following course of action will occur under Alternative 7 as modified in the ROD: 540 Best Available Technology (BAT) snowmobiles and 83 snowcoaches will be allowed per day in Yellowstone. All snowmobiles and snowcoaches will be 100% commercially guided. For the winter season of 2007–2008 Sylvan Pass will be managed continuing the combined program outlined in the 2004 Temporary Plan. After the winter of 2007–2008, in order to maximize risk reduction, the pass would be open and managed using full avalanche forecasting (as defined in the Sylvan Pass Operational Risk Management Assessment). When full forecasting indicates the pass is safe, the pass will be open to oversnow travel (both motorized and non-motorized access).

The NPS will, in good faith, work cooperatively with the State of Wyoming, Park County, Wyoming, and the City of Cody to determine how to provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass in the winter use seasons beyond 2007–2008.

Beginning with the 2011–2012 season, all snowcoaches operating in the parks will be required to meet BAT emission and sound level requirements.

In Grand Teton and the Parkway, grooming and motorized oversnow travel on the Continental Divide Snowmobile Trail (CDST) between Moran Junction and Flagg Ranch will be discontinued. However, those interested in through travel on the CDST may transport their snowmobiles on trailers between these locations.

Twenty-five snowmobiles a day will be allowed to travel on the Grassy Lake Road with no BAT or guiding requirement. Forty unguided BAT snowmobiles a day will be allowed on Jackson Lake to facilitate ice fishing by those possessing appropriate fishing gear and a valid State of Wyoming fishing license.

This course of action and seven alternatives were analyzed in the Draft and Final Environmental Impact Statements. 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 preferred alternative, a finding on 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: John Sacklin, P.O. Box 168, Yellowstone National Park, WY 82190, (307) 344–2019, *yell_winter_use@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov*.

Dated: November 20, 2007.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E7–24165 Filed 12–12–07; 8:45 am]

BILLING CODE 4312–CT–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–444–446 (Final) and 731–TA–1107–1109 (Final)]

Coated Free Sheet Paper From China, Indonesia, and Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded,[2] by reason of imports from China, Indonesia, and Korea of coated free sheet paper, provided for in subheadings 4810.13.19, 4810.13.20, 4810.13.50, 4810.13.70, 4810.14.19, 4810.14.20, 4810.14.50, 4810.14.70, 4810.19.19, and 4810.19.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Governments of China, Indonesia, and Korea and to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective October 31, 2006, following receipt of a petition filed with the Commission and Commerce by NewPage Corp., Dayton, OH. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of coated free sheet paper from China, Indonesia, and

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Charlotte R. Lane dissenting.

Korea were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 5, 2007 (72 FR 36719). The hearing was held in Washington, DC, on October 18, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 6, 2007. The views of the Commission are contained in USITC Publication 3965 (December 2007), entitled *Coated Free Sheet Paper from China, Indonesia, and Korea: Investigation Nos. 701–TA–444–446 (Final) and 731–TA–1107–1109 (Final).*

By order of the Commission.

Issued: December 7, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24103 Filed 12–12–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–ZA13

Proposed Class Exemption for Plan Fiduciaries When Plan Service Arrangements Fail To Comply With ERISA Section 408(b)(2)

AGENCY: Employee Benefits Security Administration.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). If granted, the proposed exemption would relieve a plan fiduciary from engaging in a transaction that constitutes a prohibited furnishing of services to an employee benefit plan. The exemption would apply to a plan fiduciary who enters into (or extends or renews) a written contract or arrangement for the provision of services to an employee benefit plan by a service provider to the plan when the resulting contract or arrangement between the plan and the service provider fails to constitute a ''reasonable contract or arrangement'' due to the service provider's failure to comply with its contractual obligation to disclose certain information as required by 29 CFR § 2550.408b–2(c)(1), as amended (''disclosure obligations''). The proposed exemption, if granted, would also affect participants and beneficiaries of employee benefit plans to the extent such plans enter into any contracts or arrangements for ''necessary services'' with entities that do not provide sufficient disclosures to the plan to enable the responsible plan fiduciary to determine that there is a ''reasonable contract or arrangement'' that complies with ERISA section 408(b)(2).

DATES: Written comments must be received by the Department on or before February 11, 2008.

ADDRESSES: To facilitate the receipt and processing of comment letters, the Employee Benefits Security Administration (EBSA) encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *http://www.regulations.gov* (follow instructions for submission of comments). Persons submitting comments electronically should not submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Plan Fiduciary Class Exemption for Section 408(b)(2) Amendment, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* or *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Fil Williams, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the restrictions of section 406(a)(1)(C) of the Act. The Department is proposing the class exemption on its own motion pursuant to section 408(a) of the Act, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

I. Executive Order 12866

Under Executive Order 12866, the U.S. Department of Labor (the Department) must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that likely will result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed exemption is significant under section 3(f)(1) of the executive order because it likely will materially affect a sector of the economy. Accordingly, the proposed exemption has been reviewed by OMB.

As explained in the preamble above, the proposed exemption will only be used in connection with the proposed regulation published in this same **Federal Register** entitled ''Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure.'' The Department conducted a Regulatory Impact Analysis (RIA) for the proposed regulation, published elsewhere in this issue of the **Federal Register**. The RIA discusses the costs and benefits of the proposed regulation and quantifies the costs to service providers. In considering costs to plans, the Department determined that, because fiduciaries already have a duty to evaluate the reasonableness of contracts and arrangements with service providers, the proposed regulation generally reduces the time and effort fiduciaries need to spend to obtain the necessary information. The Department acknowledges that some plans may incur increased costs from the proposed

regulation if they need to review unnecessary or increasingly detailed disclosure information. The Department concluded that any additional effort on the part of fiduciaries due to the proposed regulation would be offset by the reduced effort fiduciaries would need to spend to obtain the required information from service providers. The Department thus did not attempt to quantify these additional costs. The proposed class exemption could result in additional costs to plans due to the requirement that fiduciaries must notify the service provider and possibly the Department upon discovering an inadequate disclosure. The Department determined that these additional costs, which likely would accrue to only a small percentage of plan fiduciaries, were still within the range of what would be reasonably offset by the reduced costs for plans under the proposed regulation. The Department therefore did not attempt to quantify the costs of the proposed exemption for plan fiduciaries.

II. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

The proposed exemption, if granted, will be used only by plan fiduciaries that have unknowingly entered into a contract or arrangement which is not reasonable according to the requirements of the proposed regulation (published elsewhere in this issue of the **Federal Register**). The Department has combined the paperwork burdens for the proposed regulation and the proposed class exemption under one Information Collection Request (ICR). By combining the two collections of information, the Department believes that the general public will gain a better understanding of the burden impact as it relates to different kinds of respondents. The specific burden for the proposed exemption includes labor and materials costs of fiduciaries' written requests to service providers and notifications to the Department. The hour and cost burdens for the ICR are described more fully in the preamble to the proposed regulation, ''Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure,'' under the section on the Paperwork Reduction Act.

III. Background

The Department has published in today's **Federal Register** a proposal to amend its regulations under ERISA section 408(b)(2). Specifically, the Department is proposing to amend its regulations at 29 CFR § 2550.408b–2(c) to provide that any contract or arrangement for services to an employee benefit plan by certain service providers, in order to be considered a ''reasonable contract or arrangement'' in compliance with such regulations, must require specific written disclosures regarding the service provider's compensation, fees and conflicts of interest that might affect its performance of services.

The service providers affected by the proposed regulation, as discussed therein, include those who: (i) Provide or may provide services to an employee benefit plan pursuant to a written contract or arrangement as a fiduciary, within the meaning of section 3(21) of ERISA or under the Investment Advisers Act of 1940; (ii) provide or may provide any one or more of the following services to the plan pursuant to the contract or arrangement: Banking, consulting, custodial, insurance, investment advisory (plan or participants), investment management, recordkeeping, securities or other investment brokerage, or third-party administration; or (iii) receive or may receive indirect compensation or fees, as described in proposed § 2550.408b–2(c)(1)(iii)(A)(*1*), in connection with the following services to the plan: Accounting, actuarial, appraisal, auditing, legal, or valuation.

As noted in the preamble to the proposed regulation, as published in today's **Federal Register**, when selecting service providers, a fiduciary must have enough information to make informed decisions about the services to be provided, the costs of those services, and potential conflicts of interest. The proposed regulation requires that a ''reasonable contract or arrangement'' for certain services under section 408(b)(2) must be in writing and that the terms of the contract or arrangement must require the service provider to disclose specific information. The regulation further requires that the service provider furnish the appropriate plan fiduciary with the specified information in accordance with the terms of the contract or arrangement.

As also discussed in the preamble to the proposed regulation, a failure to satisfy the conditions of the regulation will, among other things, cause the responsible plan fiduciary to violate the prohibited transaction provisions of ERISA section 406(a)(1)(C) because the transaction would not satisfy the statutory exemption under section 408(b)(2) of ERISA. A failure to comply with the regulation would also result in a prohibited transaction under section 4975(c)(1)(C) of the Internal Revenue Code (the Code) because the transaction would not satisfy the Code's parallel statutory exemption for services at 26 U.S.C. § 4975(d)(2). A prohibited transaction under section 4975 of the Code subjects the service provider as a ''disqualified person'' to excise taxes as described in section 4975(a) and (b) of the Code.

The Department recognizes that there may be circumstances when a plan fiduciary enters into a contract or arrangement that appears to meet the requirements of the regulation for relief under ERISA section 408(b)(2), but unbeknownst to the plan fiduciary, the service provider fails to disclose information consistent with the terms of the regulation and the contract or arrangement. In the absence of an exemption providing otherwise, the service provider's failure to comply will result in a prohibited transaction by both the service provider and the plan fiduciary. In an effort to address this situation, the Department proposes to adopt a class exemption that would relieve the plan fiduciary from liability for a prohibited transaction resulting from the service provider's failure to comply with the regulation. A description of the proposed class exemption follows.

IV. Description of the Proposed Class Exemption

The proposed exemption consists of three parts. Section I sets forth the general exemption and describes the transactions covered. Section II contains specific conditions applicable to transactions described in section I and requires the plan fiduciary to notify the Department under certain circumstances of the service provider's failure to comply with their disclosure obligations. Section III sets forth the timing, content and other requirements applicable to the notice required to be filed with the Department by the

responsible plan fiduciary pursuant to section II.[1]

The exemption set forth in section I would, upon adoption, provide relief from the restrictions of section 406(a)(1)(C) of ERISA to a plan fiduciary with authority to cause the plan to enter into, extend or renew a written contract or arrangement for the provision of necessary services (''the responsible plan fiduciary''), notwithstanding the service provider's initial or subsequent failure to comply with its disclosure obligations, provided that the conditions set forth in section II are met. As noted below, once the responsible plan fiduciary discovers that the service provider failed to meet its disclosure obligations, the fiduciary must, as a condition for relief under the exemption, take steps to address the failure.

Section II.A. of the proposed exemption requires that the responsible plan fiduciary, taking into account all of the information available at the time the contract or arrangement was entered into, extended or renewed, reasonably believed that the contract or arrangement met the requirements of 29 CFR § 2550.408b–2(c)(1). In addition, at the time referred to above, the responsible plan fiduciary must not know, or have reason to know, that the service provider failed, or would fail, to comply with its disclosure obligations. This condition reinforces the principle that the plan fiduciary must have entered into the contract or arrangement with a reasonable belief that the contract or arrangement met the requirements for a reasonable contract or arrangement under § 2550.408b–2(c)(1) and without knowing of the service provider's disclosure failures.

Section II.B.1 of the proposal requires that, upon discovery that the service provider failed to comply with its disclosure obligations, the responsible fiduciary shall, if it has not already received the information that the service provider failed to disclose under its disclosure obligations, request in writing that the service provider furnish the information. If the service provider fails to comply with the plan fiduciary's written request within 90 days, section II.B.2 provides that the plan fiduciary shall notify the Department. The Department believes that this condition will increase the likelihood that service providers will furnish plan fiduciaries the information they need to make informed decisions about the contract or arrangement with the service provider.[2]

Section II.C. of the proposal further provides that, after the responsible plan fiduciary discovers that the service provider failed to comply with its disclosure obligations, the fiduciary shall determine whether to terminate or continue the contract or arrangement. In this regard, it is expected that responsible plan fiduciaries would evaluate the nature of the particular disclosure failure and determine the extent of the actions necessary under the facts and circumstances. Such fiduciary should consider, among other factors, the availability, qualifications and costs of potential replacement service providers, and the responsiveness of the service provider in furnishing the missing information. Section II.C., however, does not abrogate or supersede the duties imposed upon the fiduciary by section 404(a) of ERISA, which also require the fiduciary to consider what steps to take in response to the service provider's nondisclosure.

Section III of the proposal sets forth the timing, content and other requirements applicable to notifying the Department of a service provider's failure to meet its disclosure obligations. Specifically, section III.B. provides that the responsible plan fiduciary shall file a notice with the Department not later than 30 days following the earlier of: (i) The service provider's refusal to furnish the requested information; or (ii) the date which is 90 days after the date the written request referred to in Section II.B.1 is made. In this context, a service provider's refusal to provide information to the responsible plan fiduciary, following such fiduciary's written request, shall constitute a service provider's failure to meet its disclosure obligations prior to the end of the 90-day period. The notice to the Department must contain the following information: (i) The name of the plan; (ii) the three digit plan number used for the plan's Annual Report; (iii) the plan sponsor's name, address, and EIN; (iv) the name, address and telephone number of the responsible plan fiduciary; (v) the name, address, phone number, and, if known, EIN of the service provider; (vi) a description of the services provided to the plan; (vii) a description of the information that the service provider failed to furnish; (viii) the date on which such information was requested in writing from the service provider; and (ix) a statement as to whether the service provider continues to provide services to the plan. This notice should be sent to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave., NW., Suite 600, Washington, DC 20210. Such notices may also be sent electronically to: *OE-DelinquentSPnotice@dol.gov*.

The Department will provide specific information for the written or electronic submission of the required notice as part of the final exemption. The Department also anticipates development of a model notice by the Department that will facilitate compliance with the notification requirement.

V. Effective Date

The Department is proposing an effective date for the proposed class exemption which is 90 days after the publication of the final exemption in the **Federal Register**. This date corresponds with the effective date for the proposed amendments to the Department's regulations at 29 CFR 2550.408b–2(c).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act. Section 404 requires, among other things, that a fiduciary discharge its duties with respect to the plan prudently and solely in the interests of the plan's participants and beneficiaries. A transaction's qualification for an exemption also does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(3) If granted, the proposed exemption will apply to a transaction only if the conditions specified in the exemption are met; and

[1] As with any exemption from ERISA's prohibited transaction provisions, the party seeking to avail itself of the relief provided by the exemption has the burden of demonstrating compliance with the conditions of the exemption.

[2] The notice requirement will not relieve a plan administrator of the obligation to report a prohibited transaction in accordance with the instructions to the Annual Report Form 5500 Series, without regard to whether the service provider furnishes information in response to the fiduciary's request.

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules.

Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 Fed Reg. 32836, 32847, August 10, 1990).

Section I—Exemption for the Plan Fiduciary Entering Certain Contracts or Arrangements With a Service Provider

Effective [90 days after publication of the final exemption in the **Federal Register**], the restrictions of section 406(a)(1)(C) of the Act shall not apply to a plan fiduciary who uses its authority to cause an employee benefit plan to enter into (extend or renew) a written contract or arrangement for the provision of services (''the responsible plan fiduciary''), notwithstanding the service provider's initial or subsequent failure to comply with its contractual obligation to disclose certain information as required by 29 CFR 2550.408b–2(c)(1) (''disclosure obligations''), provided that the conditions set forth in section II below are met.

Section II—Conditions

A. The responsible plan fiduciary, taking into account all of the information available at the time the contract or arrangement was entered into, extended or renewed, reasonably believed that the contract or arrangement met the requirements of 29 CFR § 2550.408b–2(c)(1) and did not know, or have reason to know, that the service provider failed or would fail to comply with its disclosure obligations;

B.1. The responsible plan fiduciary, upon discovering that the service provider failed to comply with its disclosure obligations, shall, if it has not already received the information that the service provider failed to disclose under its disclosure obligations, request in writing that the service provider furnish the information;

2. If the service provider fails to comply with the plan fiduciary's written request within 90 days of the date of that request, the responsible plan fiduciary shall, in accordance with Section III, notify the Department of Labor of the service provider's failure; and

C. The responsible plan fiduciary, following discovery that the service provider failed to comply with its disclosure obligations, shall determine whether to terminate or continue the contract or arrangement. The responsible plan fiduciary will evaluate the nature of the particular disclosure failure and determine the actions necessary under the facts and circumstances. Such fiduciary shall consider, among other factors, the availability, qualifications and costs of potential replacement service providers, and the responsiveness of the service provider in furnishing the information that the service provider should have disclosed, but did not, under its disclosure obligations.

Section III—Notice Requirements

A. The notice required by Section II.B.2 shall contain the following information: (i) The name of the plan; (ii) the three digit plan number used for the plan's Annual Report; (iii) the plan sponsor's name, address, and EIN; (iv) the name, address, and telephone number of the responsible fiduciary; (v) the name, address, phone number, and, if known, EIN of the service provider; (vi) a description of the services provided to the plan; (vii) a description of the information that the service provider failed to furnish; (viii) the date on which such information was requested in writing from the service provider; and (ix) a statement as to whether the service provider continues to provide services to the plan;

B. The notice required by Section II.B.2 shall be filed with the Department not later than 30 days following the earlier of: (i) The service provider's refusal to furnish the requested information; or (ii) the date which is 90 days after the date the written request referred to in Section II.B.1 is made; and

C. The notice required by Section II.B.2 shall be sent to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave., NW., Suite 600, Washington, DC 20210; or may be sent electronically to *OE-DelinquentSPnotice@dol.gov*.

Signed at Washington, DC, this 7th day of December, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–24063 Filed 12–12–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (P.L. 109–233) and Section 9 of the Federal Advisory Committee Act (FACA) (P.L. 92–462, Title 5 U.S.C. app.II). The ACVETEO's authority is codified in Title 38 U.S. Code, Section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the Department of Labor meets these needs; and assisting in carrying out outreach to employers seeking to hire veterans.

The Advisory Committee on Veterans' Employment, Training and Employer Outreach will meet on Monday, February 11th from 1 p.m. to 5 p.m. and on Tuesday, February 12th from 8 a.m. to 1:30 p.m. at the Doubletree Hotel, 3203 Quebec Street, Denver, Colorado 80207.

The committee will discuss programs assisting veterans seeking employment with special emphasis on transition assistance programs (TAP) and raising employer awareness as to the advantages of hiring veterans.

Individuals needing special accommodations should notify Bill Offutt at (202) 693–4717 by February 2, 2008.

Signed in Washington, DC, this 6th day of December 2007.

John M. McWilliam,

Deputy Assistant Secretary, Veterans Employment and Training.

[FR Doc. E7–24157 Filed 12–12–07; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–093)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 6,667,725, Radio Frequency Telemetry System for Sensors and Actuators, and U.S. Patent No. 7,191,013, Hand Held Device for Wireless Powering and Interrogation of BioMEMS Sensors and Actuators to Endotronix having its principal place of business in Peoria, Illinois. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Glenn Research Center, MS 21–14, 21000 Brookpark Rd., Cleveland, OH 44135, telephone (216) 433–5754, facsimile (216) 433–6790.

FOR FURTHER INFORMATION CONTACT: Kaprice Harris, Intellectual Property Counsel, Office of Chief Counsel, NASA Glenn Research Center, MS 21–14, 21000 Brookpark Rd., Cleveland, OH 44135, telephone (216) 433–5754, facsimile (216) 433–6790. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

December 3, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–24116 Filed 12–12–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–095)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Partially Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in U.S. Patent Application Serial No.10/385,168 entitled Phase/Matrix Transformation Weld Process and Apparatus and NASA Case No. MFS–31559–1–DIV to Keystone Synergistic Enterprises, Inc. having its principal place of business in Port St. Lucie, Florida. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Program Office/ED03, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: December 3, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–24115 Filed 12–12–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–094)]

Notice of Intent To Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant a Partially Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in U.S. Patent Application Serial No. 11/543,284 entitled Fiber Optic Liquid Mass Flow Sensor and Method and NASA Case No. MFS–32031–1 to Kratos Defense and Security Solutions having its principal place of business in San Diego, California. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent

Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Program Office/ED03, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/*.

Dated: December 3, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–24111 Filed 12–12–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

National Science Board ad hoc Committee for the Vannevar Bush Award; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee for the Vannevar Bush Award, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

Date and Time: Friday, December 21, 2007 at 2 p.m.

Subject Matter: Discussion of candidates for the 2008 Vannevar Bush Award.

Status: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Jennifer Richards, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Russell Moy,

Attorney-Advisor.

[FR Doc. E7–24220 Filed 12–12–07; 10:14 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NUREG/BR–0238, Materials Annual Fee Billing Handbook. NRC Form 628, ''Financial EDI Authorization''. NUREG/BR–0254, Payment Methods. NRC Form 629, ''Authorization for Payment by Credit Card''.

2. *Current OMB approval number:* 3150–0190.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

5. *The number of annual respondents:* 466 (10 for NRC Form 628 and 456 for NRC Form 629 and NUREG/BR–0254).

6. *The number of hours needed annually to complete the requirement or request:* 38 (.8 hour for NRC Form 628 and 37 hours for NRC Form 629 and NUREG/BR–0254).

7. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC. The NRC Form 628, ''Financial EDI Authorization,'' provides an option to make electronic payment through the Automated Clearinghouse (ACH) Network and authorizes the licensee's bank to pay invoices to the NRC through the ACH. The NRC Form 628 requests the licensee's name, electronic funds transfer contact, telephone number, address, authorized signature and title.

NRC Form 629, ''Authorization for Payment by Credit Card,'' is another option used to authorize payment. The credit card authorization form is used by licensees to authorize payment by credit card for license fees and for payment of fees for fingerprint cards, and solicits information that identifies the cardholder's name, address, account number, card expiration date, cards accepted, cardholder's signature, invoice number or license number.

There are no record keeping requirements associated with this collection.

Submit, by February 11, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 7th day of December 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–24168 Filed 12–12–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 70–27]

BWX Technologies, Inc., Environmental Assessment and Finding of No Significant Impact Related to Proposed Issuance of an Exemption From 10 CFR 70.24 Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment (EA) and finding of no significant impact (FONSI).

FOR FURTHER INFORMATION CONTACT: Amy M. Snyder, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB–2C40M, Washington, DC 20555–0001, telephone (301) 492–3225 and e-mail *ams3@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under U.S. Nuclear Regulatory Commission (NRC) license SNM–42 and the provisions of 10 CFR Part 70, Domestic Licensing of Special Nuclear Material, BWX Technologies, Inc. (BWXT or the licensee) is authorized to receive and possess special nuclear material for the research, fabrication and assembly of nuclear fuel and related components at its facility, located in Lynchburg, Virginia. Under this license, BWXT is also allowed to receive, acquire, and transfer irradiated fuel (spent nuclear fuel) at its facility. The NRC staff is considering the issuance of an exemption to requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 70.24, under a certain condition, for the spent nuclear fuel storage areas at the BWXT site. If the NRC decides to grant the exemption, then the license will be amended to incorporate a license condition to reflect the exemption. These actions would then allow BWXT to implement its proposed method to meet the January 16, 2007, NRC Order (EA–07–011) requiring BWXT to implement additional security measures at the BWXT site. The licensee found that if these measures are taken, it would not be in full compliance with the criticality monitoring requirements of 10 CFR 70.24. Granting this exemption would also allow BWXT to continue to store, in a safe configuration, spent nuclear fuel.

The NRC has prepared an EA in support of granting an exemption and amending the license. Based on this EA, the NRC has concluded that a FONSI is appropriate and, therefore, an environmental impact statement (EIS) is not warranted. The NRC is also conducting a safety review of the BWXT request for exemption. The results of the safety review will be documented in a separate Safety Evaluation Report.

II. Environmental Assessment

Background

By letter, dated May 2, 2007, BWXT submitted its exemption request. On May 14, 2007, BWXT submitted, via email, a clarification that stated its current Environmental Report (ER), dated March 10, 2004, addresses the areas where spent nuclear fuel, previously used for research, is stored at the site.

The documents that were evaluated in preparing this EA included the NRC's EA for Renewal of License SNM–42, dated August 2005, the current BWXT ER for Renewal of License SNM–42, dated March 10, 2004, and the e-mail from BWXT (Leah Morrell, May 14, 2007) stating, with respect to this exemption request, that the BWXT's ER, dated March 10, 2004, is the current ER.

Review Scope

The purpose of this EA is to assess the environmental impacts of the proposed exemption and associated license amendment. It does not approve the request. This EA is limited to the proposed exemption from the requirements of 10 CFR 70.24 in spent nuclear fuel storage areas, and any cumulative impacts on existing plant operations. The existing conditions and operations at the BWXT facility were evaluated, by the NRC, for environmental impacts in an EA for the renewal of the BWXT license. This assessment presents the information and analysis of the proposed actions for determining whether issuance of a FONSI is appropriate.

Need for the Proposed Action

As a result of the events of September 11, 2001, the NRC has required heightened security measures for facilities that are authorized to possess special nuclear material. BWXT is one such facility. Following an evaluation, by BWXT, of ways to meet these required security measures, BWXT concluded that the best method to meet those measures would affect the current criticality monitoring system. Specifically, the implementation of BWXT's proposed method to implement the NRC Security Order (EA–07–011) would make the detection of a criticality challenging for the criticality monitoring systems located in each spent nuclear fuel storage area when the additional security measures imposed by EA–07–011 are in place. The additional security measures are not currently in place.

The Proposed Actions

The proposed actions are: (1) The NRC granting an exemption to the requirements of 10 CFR 70.24 in the spent fuel storage areas during the period of time the licensee does not need to access the spent nuclear fuel; and (2) the NRC issuing an amendment to the license reflecting such an exemption. These actions would allow BWXT to continue to safely store spent nuclear fuel in storage systems. This exemption would not apply during the short and very infrequent periods during which access to the stored material is required, or if BWXT no longer has spent nuclear fuel at its licensed site. The proposed actions are in accordance with the licensee's application dated May 2. 2007.

Alternative to the Proposed Actions

The actions available to the NRC are:

1. Approve the exemption and associated license amendment as described; or
2. No action (i.e., deny the request and do not amend the license,—the no-action alternative.)

Affected Environment

The affected environment for the proposed action and the alternative is the BWXT site. The affected environment is identical to the affected environment assessed in the EA, dated August 2005. A full description of the site and its characteristics is given in the NRC's 2005 EA.

Environmental Impacts of the Proposed Action and the No Action Alternative

The NRC staff has completed its evaluation of the environmental impacts of the proposed action and concludes granting the licensee an exemption to the criticality monitoring requirements of 10 CFR 70.24 for the spent nuclear fuel storage system during periods when access to the spent nuclear fuel is not required; and would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. No changes are being made in the types of effluents that may be released off-site. There is no significant increase in the amount of any effluent released off-site. There is no significant increase in occupational or public radiation exposure. Therefore,

there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed actions. The proposed action does not affect non-radiological plant effluents and has no other effect on the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action and, thus, concludes that the proposed action will not have any significant impact to the human environment. The proposed action does not alter the previous National Environmental Protection Act findings made in approving the license renewal.

Environmental Impacts of the Alternative to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the no-action alternative). Denial of the exemption request would result in: (1) No associated license amendment: and (2) no change to current environmental impacts, as the denial would result in the criticality monitoring requirements of 10 CFR 70.24 continuing to be fully applicable. Thus, the environmental impacts of the proposed action and the alternative action are identical because the present or absence of a criticality monitor and alarm for the spent nuclear fuel that is safety stored has no impact on the environment.

Agencies and Persons Consulted

In accordance with NUREG 1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' the NRC staff consulted with other agencies regarding the proposed actions. These consultations were intended to provide other agencies an opportunity to comment on the proposed actions, and to ensure that the requirements of Section 106 of the National Historic Preservation Act, and Section 7 of the Endangered Species Act were met with respect to the proposed actions.

Commonwealth of Virginia

The staff, on October 10, 2007, consulted with the Virginia Department of Environmental Quality (VDEQ) and the Virginia Department of Health (VDH). The VDEQ reviewed the draft and agreed with NRC's conclusion that no significant environmental impacts would result from this proposed action, if implemented. The VDH had technical questions regarding the criticality monitoring systems.

Fish and Wildlife

The staff has determined that consultation for Section 7 of the Endangered Species Act is not required because the proposed action does not involve construction or any other change in physical environment, therefore, will not affect listed species or critical habitat.

Virginia Department of Historic Resources

The staff has determined that the proposed action does not have the potential to effect on historic properties because it does not involve construction or any other change in physical environment. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion

On the basis of the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment and that preparation of an EIS is not warranted.

III. Finding of No Significant Impact

On the basis of this assessment, the Commission has concluded that environmental impacts that are associated with the proposed action would not be significant and the Commission is making a finding of no significant impact.

Preparers

J. Wiebe, Project Manager, All Sections.

A. Snyder, Project Manager, Sections 1.0, 4.0 and 5.0.

List of References

1. BWXT. Request for Exemption from 10 CFR 70.24, Letter (May 2, 2007) to Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Lynchburg, Virginia: BWXT, Nuclear Products Division (confidential).

2. NRC. NUREG 1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs—Final Report. (August 2003) Washington, DC: NRC (ML032450279).

3. BWXT. Environmental Report for Renewal of License SNM–42, March 10, 2004 (nonpublic).

4. BWXT. E-mail to NRC, Criticality Exemption, dated May 14, 2007 (ML073180015).

5. NRC. Environmental Assessment Related to the Renewal of License No. SNM–42. Docket 70–027 (August 2005) Washington, DC: NRC. (ML071300450).

6. NRC. E-mail to VDEQ, Pre-decisional EA, dated October 9, 2007, (ML073180022).

7. NRC. E-mail to VDH, Pre-decisional EA, dated October 10, 2007, (ML073180034).

8. VDH. Letter to NRC, Response to Pre-decisional EA, dated October 24, 2007 (ML73180017).

9. NRC. E-mail to VDH, Additional Comments on Pre-decisional EA, dated October 31, 2007 (ML073180027).

10. VDH. E-mail to NRC, Response to Additional Comments on Pre-decisional EA, dated October 31, 2007 (ML073180029).

11. VEQ. Letter to NRC, Response to Pre-decisional EA, dated October 17, 2007 (ML073230756).

Dated at Rockville, Maryland this 30th day of November, 2007.

For the Nuclear Regulatory Commission.

Peter J. Habighorst,

Chief, Fuel Manufacturing Branch, Fuel Facility Licensing Directorate Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–24200 Filed 12–12–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–184]

National Institute of Standards and Technology; National Bureau of Standards Reactor; Notice of Availability of the Final Environmental Impact Statement for License Renewal of NBSR

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final Environmental Impact Statement (EIS) for License Renewal of the operating license TR–5 for an additional 20 years of operation for the National Bureau of Standards Reactor (NBSR) located on the National Institute of Standards and Technology (NIST) campus in upper Montgomery County, Maryland. Possible alternatives to the proposed action (license renewal) include no action, constructing a new reactor to replace the NBSR capabilities, and using alternative research facilities.

The final EIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.html*. The Accession Number for the final EIS is ML072970861.

Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Beissel, Environmental Review Branch, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Beissel may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 6th day of December, 2007.

For the Nuclear Regulatory Commission.

Eric Benner,

Branch Chief, Environmental Review Branch, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7–24172 Filed 12–12–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457, Byron Station, Unit Nos. 1 and 2, and Docket Nos. STN 50–454 and STN 50–455, Braidwood Station, Units 1 and 2]

Exelon Generation Comany, LLC; Biweekly Notice; Application for Amendment to the Facility Operating License Involving Proposed No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on November 20, 2007 (72 FR 65375), that incorrectly identified the amendment numbers for Byron Station, Unit Nos. 1 and 2, and Braidwood Station, Units 1 and 2. This action is necessary to correct the erroneous amendment numbers.

FOR FURTHER INFORMATION CONTACT: Christopher Gratton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1055, e-mail: *CXG1@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 65375, in the second column, in the second from the last complete paragraph, first line, the Notice is corrected to read from ''Amendment Nos.: 150, 150, 145, 145,'' to ''Amendment Nos.: 151, 151, 146, 146.''

Dated in Rockville, Maryland, this 7th day of December 2007.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing.

[FR Doc. E7–24179 Filed 12–12–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–07–305]

In the Matter of: Licensees Authorized To Possess Radioactive Material Quantities of Concern; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access To Certain Radioactive Material (Effective Immediately)

I

The Licensees identified in Attachment 1 [1] to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing them to possess items containing radioactive materials in quantities of concern. These materials and the quantities of concern are identified in Attachment 2 to this Order. Section 652 of the Energy Policy Act of 2005 (EPAct), which became law on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for ''any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks.'' Section 149 of the AEA also requires that ''all fingerprints obtained by a licensee or applicant * * *shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.'' NRC has decided to implement this requirement, prior to the completion of a future rulemaking, which will implement these provisions of the EPAct, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has the potential to result in significant adverse impacts to the public health and safety. Individuals or classes of individual listed in 10 CFR 73.61 (72 FR 4945 (February 2, 2007)) are relieved from the fingerprinting and FBI identification and criminal history records check requirements of section 149. Individuals listed in Attachment 3, Paragraph 3 have already satisfied the requirements of section 149 of the AEA and therefore do not need to take additional action. Therefore, as set forth in this Order and in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for unescorted access to certain radioactive material.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued the Increased Controls (IC) Orders (EA–05–090) [2] to certain Licensees (IC Licensees, Licensees) who are authorized to possess radioactive material in quantities of concern. These Orders increased the Licensees' control over their sources in order to prevent unintended radiation exposure and malicious acts. One specific requirement imposed by the IC Orders required Licensees to conduct background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials. ''Access'' to these radioactive materials means that an individual could exercise some physical control over the material or devices containing the material. Prior to the enactment of the EPAct, the NRC did not have the authority, except in the case of power reactor Licensees, to require Licensees to submit fingerprints for FBI identification and criminal history records checks of individuals being considered for unescorted access to radioactive materials subject to NRC regulations. The Commission has determined that radioactive materials possessed by IC Licensees are considered of such significance to the public health and safety as to warrant fingerprinting and FBI identification and criminal history records checks for such persons. Therefore, in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing the fingerprinting and FBI identification and criminal history records check requirements, as set forth in this Order, including those requirements identified in Attachment 3 to this Order on all IC Licensees identified in Attachment 1 to this Order,

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Subsequently, the IC Order requirements were imposed through license condition on new or amended NRC licenses authorizing the possession of radioactive materials in quantities of concern as identified in Attachment 2 to this Order.

which are currently authorized to possess radioactive materials in quantities of concern. These requirements will remain in effect until the Commission determines otherwise.

In addition, pursuant to 10 CFR 2.202, because of the potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern, I find that the public health and safety require that this Order be effective immediately.

III

Accordingly, pursuant to sections 81, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR parts 30 and 33, *It is hereby ordered*, effective immediately, that all licensees identified in attachment 1 to this order shall comply with the requirements of this order as follows:

A. 1. The Licensee shall, within ninety (90) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 3 of this Order for individuals that require unescorted access to certain radioactive materials.

2. Within ninety (90) days of the date of this Order, the Licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability (T&R) Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials identified in Attachment 2) is deemed trustworthy and reliable by the Licensee as required in paragraph B.2 of this Order.

3. The Licensee shall, in writing, within sixty (60) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order or in Attachment 3 to this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

4. The Licensee shall complete implementation of the program established in accordance with paragraph A.1 of this Order by June 2, 2008. In addition to the notifications in paragraphs 2 and 3 above, the Licensee shall notify the Commission within twenty-five (25) days after they have achieved full compliance with the requirements described in Attachment 3 to this Order. If by June 2, 2008, the Licensee is unable, due to circumstances beyond its control, to complete implementation of this Order, the Licensee shall submit a written request to the Commission explaining the need for an extension of time to implement the requirements. The request shall provide the Licensee's justification for seeking more time to comply with the requirements of this Order.

5. Licensees shall notify the NRC's Headquarters Operations Office at 301–816–5100 within 24 hours if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

B. 1. Except as provided in paragraph E for individuals who are currently approved for unescorted access, the Licensee shall grant access to radioactive material in Attachment 2 in accordance with the requirements of IC.1. of the Increased Controls Order (EA–05–090) and the requirements of this Order.

2. The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable by the Licensee in accordance with the requirements of IC.1. of the Increased Controls Order (EA–05–090) before making a determination regarding the trustworthiness and reliability of another individual. If the T&R Official requires unescorted access, the Licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T&R Official.

C. Prior to requesting fingerprints from any individual, the Licensee shall provide a copy of this Order to that person.

D. Upon receipt of the results of FBI identification and criminal history records checks, the Licensee shall control such information as specified in the ''Protection of Information'' section of Attachment 3 of this Order and in requirement IC.5 of the Increased Controls Order (EA–05–090).

E. The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, by June 2, 2008, based upon the results of the fingerprinting and FBI identification and criminal history records check. The Licensee may allow any individual who currently has unescorted access to certain radioactive materials in accordance with the IC Order to continue to have unescorted access, pending a decision by the T&R Official. After June 2, 2008 no individual may have unescorted access to radioactive materials without a determination by the T&R Official (based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination) that the individual may have unescorted access to such materials.

F. 1. The Licensee shall comply with; and to the extent the recipient of this Order is also the recipient of the Increased Controls Order (EA–05–090), paragraph IC 1.b is superceded by the following:

> For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, personal references, and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e. seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee and fingerprinting and an FBI identification and criminal history records check.

2. The Licensee shall comply with; and to the extent the recipient of this Order is also the recipient of Increased Controls Order (EA–05–090), Paragraph IC 1.c of that prior Order is superceded by, the following:

> Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the licensee providing the service.

3. For Licensees who have previously received the Increased Controls Order (EA–05–090), ''Table 1: Radionuclides of Concern'' is superceded by Attachment 2 to include Ra–226. The previous Increased Controls Order (EA–05–090) will, therefore, also apply to Ra–226 as noted in Attachment 2.

Licensee responses to A.1, A.2., A.3. and A.4., above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington,

DC 20555. Licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within thirty (30) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within thirty (30) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The E-Filing Final Rule was issued on August 28, 2007, (72 FR 49,139). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a

hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 5th day of December, 2007.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees; Redacted

Attachment 2: Table 1: Radionuclides of Concern

TABLE 1.—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Am–241	0.6	16
Am–241/Be	0.6	16
Cf–252	0.2	5.4
Cm–244	0.5	14
Co–60	0.3	8.1
Cs–137	1	27
Gd–153	10	270
Ir–192	0.8	22
Pm–147	400	11,000
Pu–238	0.6	16
Pu–239/Be	0.6	16
Ra–226 [5]	0.4	11
Se–75	2	54
Sr–90 (Y–90)	10	270
Tm–170	200	5,400
Yb–169	3	81
Combinations of radioactive materials listed above [3]	See Footnote Below [4].	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n, $A_{(i,n)}$, to the quantity of concern for radionuclide n, $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc..... ≥1

[5] On August 31, 2005, the NRC issued a waiver, in accordance to Section 651(e) of the Energy Policy Act of 2005, for the continued use and/or regulatory authority of Naturally Occurring and Accelerator-Produced Material (NARM), which includes Ra–226. The NRC plans to terminate the waiver in phases, beginning November 30, 2007, and ending on August 7, 2009. The NRC has authority to regulate discrete sources of Ra–226, but has refrained from exercising that authority until the date of an entity's waiver termination. For entities that possess Ra–226 in quantities of concern, this Order becomes effective upon waiver termination. For information on the schedule for an entity's waiver termination, please refer to the NARM Toolbox Web site at *http://nrc-stp.ornl.gov/narmtoolbox.html*.

Attachment 3: Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

The new fingerprinting requirements supplement previous requirements issued by the Increased Controls Order (EA–05–090).

Licensees currently have a program to grant unescorted access to individuals. As required by condition A.1 of the Order, Licensees shall modify its current trustworthiness and reliability program to include the following:

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in attachment 2. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g. National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR part 1572, Customs and Border Patrol's Free and Secure Trade Program [1]) within the

[1] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a

last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation [2]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI. Additionally, the Licensee shall submit a certification of the trustworthiness and reliability of the T&R Official as determined in accordance with paragraph B.2 of this Order.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of the IC Order (EA–05–090), in making a determination whether to grant unescorted access to certain radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in attachment 2.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in attachment 2.

Prohibitions

A Licensee shall not base a final determination to deny an individual unescorted access to certain radioactive material solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–24197 Filed 12–12–07; 8:45 am]

BILLING CODE 7590–01–P

background records check, may receive expedited entrance privileges at the northern and southern borders.

[2] This documentation must allow the T&R Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad

Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to a currently approved collection of information: 3220–0185, Report of Medicaid State Office on Beneficiary's In Status consisting of Form RL–380–F, Report to State Medicaid Office. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into ''buy-in agreements'' with the Secretary of Health and Human Services for the purpose of enrolling certain groups of low-income individuals under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB uses Form RL–380–F, Report to State Medicaid Office, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside. Completion of Form RL–380–F is voluntary. One response is received from each respondent.

At the request of various state Medicaid offices, the RRB proposes revisions to Form RL–380–F to add items requesting a beneficiary's Part A and Part B effective date. The new information will assist them in locating pertinent records of the subject beneficiary. Other minor non-burden impacting editorial changes are proposed.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 57078 on October 5, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Report of Medicaid State Office on Beneficiary's Buy-In Status.

OMB Control Number: 3220–0185.

Form(s) submitted: RL–380–F.

Type of request: Revision of a currently approved collection.

Affected public: State, Local or Tribal government.

Abstract: Under the Railroad Retirement Act, the Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside.

Changes Proposed: The RRB proposes to add items requesting a beneficiary's Part A and Part B effective date to Form RL–380–F. Other minor non-burden impacting editorial changes are proposed.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form(s): Completion time for Form RL–380–F is estimated at 10 minutes.

Estimated annual number of respondents: 600.

Total annual responses: 600.

Total annual reporting hours: 100.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be sent to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@RRB.GOV,* and to the Office of Management Budget at ATTN: Desk Officer for RRB, FAX : (202) 395–6974 or via E-mail to *OIRA_Submission@omb.eop.gov*.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–24153 Filed 12–12–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form ADV; SEC File No. 270–39; OMB Control No. 3235–0049.

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 extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form ADV'' (17 CFR 279.1). Form ADV is the investment adviser registration form filed electronically with the Commission pursuant to rules 203–1 (17 CFR 275.203–1) and 204–1 (17 CFR 275.204–1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) by advisers registered with the Commission or applying for registration with the Commission. The information collected takes the form of disclosures to the investment adviser's clients and potential clients. The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, and its conflicts of interest. Clients use certain of the information to determine whether to hire or retain an adviser.

The information collected provides the Commission with knowledge about the adviser, its business, and its conflicts of interest. The Commission uses the information to determine eligibility for registration with the Commission and to manage its regulatory, examination, and enforcement programs.

Respondents to the collection of information are investment advisers registered with the Commission or applying for registration with the Commission. The Commission estimates that the total annual reporting and recordkeeping burden of the collection of information for each respondent is 23.375 hours.

This collection of information is found at 17 CFR 279.1 and it is mandatory.

The information collected pursuant to Form ADV are filings with the Commission. These disclosures are not

kept confidential and must be preserved until at least three years after termination of the enterprise.

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.

General comments regarding the above information should be directed to the following persons: (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 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 to OMB within 30 days of this notice.

December 6, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24080 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 204–3; SEC File No. 270–42; OMB Control No. 3235–0047

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 a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 204–3 (17 CFR 275.204–3) under the Investment Advisers Act of 1940.'' (15 U.S.C. 80b). Rule 204–3, the ''brochure rule,'' requires an investment adviser to deliver their brochure to their new clients or prospective clients before or at the start of the advisory relationship. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Rule 204–3 also requires that an investment adviser deliver, or offer in writing to deliver upon written request, the brochure to their existing clients annually in order to provide them with current information about the adviser. Under rule 204–3, the investment adviser must furnish the required information to clients and prospective clients by providing either a copy of Part II of Form ADV, the investment adviser registration form, or a written document containing at least the information required by Part II of Form ADV. This collection of information is found at 17 CFR 275.204–3 and is mandatory.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204–3 imposes a burden of approximately 639.87 hours annually based on an average adviser having 670 clients. Our latest data indicate that there were 10,787 advisers registered with the Commission as of August 31, 2007. Based on this figure, the Commission estimates a total annual burden of 6,902,278 hours for this collection of information.

Rule 204–3 does not require recordkeeping or record retention. The collection of information requirements under the rule are mandatory. The information collected pursuant to the rule are not filed with the Commission, but rather take the form of disclosures to clients. Accordingly, these filings are not kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or 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 to OMB within 30 days of this notice.

Dated: December 6, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24081 Filed 12–12–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 72 FR 69258, December 7, 2007.

STATUS: Open Meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, December 11, 2007.

CHANGE IN THE MEETING: Deletion of an Item.

The following item was not considered during the Open Meeting on Tuesday, December 11, 2007:

Whether to approve the 2008 budget of the Public Company Accounting Oversight Board and will consider the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 11, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–24213 Filed 12–12–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56926; File No. SR–OPRA–2007–05]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Adopt New Form of Rider to OPRA's Vendor Agreement for Use by Television Companies That Wish To Disseminate OPRA Data

December 7, 2007.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on December 6, 2007, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan amendment would adopt a new form of Television Dissemination Rider to OPRA's Vendor Agreement for use by television companies that wish to disseminate current OPRA Data via a passive scrolling or ticker television display. OPRA's Fee Schedule would be modified to incorporate the fee that OPRA would charge for the dissemination of OPRA Data in the manner discussed below. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

OPRA proposes to amend its national market system plan by adopting a new form of Rider to its Vendor Agreement for use by television companies that wish to disseminate current OPRA Data from OPRA's Basic Service via a passive scrolling or ticker television display. The OPRA Fee Schedule would be modified to incorporate the fee that OPRA would charge for the dissemination of OPRA Data in the manner discussed below.[4]

A company that disseminates current OPRA Data to third parties is a ''Vendor'' for OPRA's purposes, and is therefore required to sign OPRA's Vendor Agreement. As a general matter, OPRA's Vendor Agreement states that any person that receives current OPRA Data from a Vendor is a ''Subscriber'' and requires the Vendor to cause each of its Subscribers to agree to a Subscriber Agreement, either with the Vendor for the benefit of OPRA, or directly with OPRA. The new form of Rider states that this requirement does not apply to persons that receive OPRA Data in the form of a passive scrolling or ticker television display.

The Vendor Agreement also requires that the Vendor report certain information to OPRA to enable OPRA to verify the fees that the Vendor is obligated to pay OPRA. The new form of Rider to OPRA's Vendor Agreement states that the reporting requirements in the Vendor Agreement will not apply to television dissemination of OPRA Data and sets out requirements that are intended to elicit only the information that OPRA needs to verify the fees paid by a television company for television dissemination.

The OPRA Data feed includes, in addition to options last sale and quotation data, the values of various indexes for which OPRA or one of the OPRA participant exchanges has permission to disseminate from the index owners together with related options market data. Some owners of the indexes that OPRA disseminates may not wish to have OPRA grant television companies the right to disseminate their indexes separate from the dissemination of related options market data. To accommodate this possibility, the Rider includes language to give OPRA the ability to grant permission to Vendor television companies to display index values separately from the dissemination of related options market data, and to revoke that permission. OPRA will treat all television companies that sign Riders identically with respect to permission to display index values. The Rider provides that, if OPRA revokes permission to display particular index values separately from the dissemination of related options market data, and as a consequence the television company Vendor no longer wishes to display OPRA Data values and pay fees for doing so, the television company Vendor may terminate the Rider and its Vendor Agreement, or only the Rider, effective as of the date that the index values cease to be available to the television company Vendor.[5]

Section 2 of the Rider requires a television company Vendor to display a legend on its television display at least three times a day. The form of the legend is the same as the legend required by the Consolidated Tape Association (''CTA'') for its counterpart Network A service, and the requirement with respect to the display of the legend is the same as the CTA requirement.[6]

OPRA is proposing to charge a fee for the dissemination via television of current OPRA Data on the basis of the number of ''thousands of households reached'' by the Vendor television company's programming.[7] This metric is widely used in the television industry and is used by CTA for its counterpart service.

The text of the proposed amendment to the OPRA Plan and the proposed changes to the OPRA Fee Schedule are available at OPRA, the Commission's Public Reference Room, and *http://opradata.com/pdf/proposed_tv_rider.pdf.*

II. Implementation of the OPRA Plan Amendment

OPRA will begin to use the proposed form Television Dissemination Rider to its Vendor Agreement upon its approval by the Commission pursuant to Section 11A of the Act[8] and Rule 608(b)(1) thereunder.[9]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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 No. SR–OPRA–2007–05 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.

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[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

[4] OPRA has filed two other filings that will affect its Fee Schedule upon or following their effectiveness: SR–OPRA–2007–03 (eliminating the ''FCO Service'' column on the Fee Schedule when all currently outstanding physical delivery FCOs are eliminated by expiration or by closing transaction, which could be as late as March 14, 2008); and SR–OPRA–2007–04 (amending the Fee Schedule to specify Professional Subscriber Device-Based Fees commencing as of January 1 of 2008, 2009 and 2010). The changes proposed in those filings do not affect the changes proposed to the Fee Schedule in this filing.

[5] Any Vendor has the right under paragraph 1(c) of the Rider to terminate the Rider, and under paragraph 19(d) of the OPRA form of Vendor Agreement to terminate the Vendor Agreement, in each case without cause upon thirty days written notice. The termination right described in the text essentially provides comfort to a television company Vendor that, if an index ceases to be available to the Vendor on less than thirty days notice, the Vendor may terminate either the Rider alone or the Rider and Vendor Agreement on the date the index ceases to be available.

[6] *See* the CTA form of Exhibit C to its form Agreement for Receipt and Use of Consolidated Network A Data and NYSE Market Data for ''Cable Broadcasts.''

[7] Specifically, OPRA plans to charge a fee of $.50 per 1,000 households reached. *See* proposed ''Television Display Fee'' on the OPRA Fee Schedule.

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608(b)(1).

All submissions should refer to File Number SR–OPRA–2007–05. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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–OPRA–2007–05 and should be submitted on or before January 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24121 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(20).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56928; File No. SR–Amex–2007–133]

Self-Regulatory Organizations; The American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce Certain Clearing Fees

December 7, 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 November 30, 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 prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal Rule Change

The Exchange proposes to reduce the clearing charge for an order in equities or ETFs routed to and executed on another market center from $0.07 to $0.04 per hundred shares.

The text of the proposed rule change is available at Amex's principal office, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 IV 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend its Equity Fee Schedule and its Exchange Traded Funds and Trust Issued Receipts Fee Schedule to reduce from $0.07 to $0.04 per hundred shares (or $0.0004 per share) the clearing charge for an Amex member order in equities or ETFs routed to and executed on another market center, thereby reducing overall transaction fees for such order routed away from $0.37 to $0.34 per hundred shares (including the $0.30 per hundred routing fee). This fee applies to Amex members only, and the Exchange's goal is to reduce cost disincentives to its members placing orders for Amex-listed securities on the Amex book.

(2) Statutory Basis

The proposed fee change is consistent with section 6(b)(4) of the Act[5] regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members for the following reasons. The reduction of the clearing charge does not discriminate among Amex members, as it is applicable to all Amex members. Further, the proposed fee change will serve to make the Amex more competitive for order flow by bringing its overall fees for routing orders to away markets for execution closer in line with the fees charged by the away markets for similar services. Currently, competitive market centers charge between $0.26 and $0.30 per hundred shares (with the exception of NYSE Arca which charges $0.40 per hundred)[6] to route trades of Amex-listed securities to the Amex itself for execution, and the new Amex aggregate transaction fee of $0.34 per hundred to route orders to away markets for execution (down from $0.37 per hundred as a function of the instant reduction of the clearing fee) places Amex more competitively within that spectrum of fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder[8] because it

[5] 15 U.S.C. 78f(b)(4).

[6] *See, e.g.,* NASDAQ Rule 7018(a) ($0.26–$0.30 per hundred, depending on volume); NYSE Price List 2007, *http://www.nyse.com/pdfs/2007pricelist.pdf,* at page 3 ($0.30 per hundred); NYSE Arca Schedule of Fees and Charges for Exchange Services, *http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf,* at page 1 ($0.40 per hundred).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml); or*
- Send an e-mail to *rulecomments@sec.gov.* Please include File No. SR–Amex–2007–133 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 No. SR–Amex–2007–133. 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 at *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 No. SR–Amex–2007–133 and should be submitted on or before January 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24118 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56923; File No. SR–CBOE–2007–146]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for the CBOE Stock Exchange

December 6, 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 November 30, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fees applicable to the CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

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 IV 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 CBSX fee schedule lists the fees applicable to trading on CBSX. The transaction fees are based on whether the executing member is ''taking'' liquidity or ''making'' liquidity in connection with the transaction. Odd-lot transactions, however, have been charged $0.003 per share to both the maker and taker side. This filing proposes to change the odd-lot charge so that it is identical to the round-lot maker-taker charge. Thus, odd-lot takers (odd-lot orders submitted to CBSX) will be charged $0.0029 per share and odd-lot makers (the CBSX Market-Makers that trade against odd-lots) will receive a per-share rebate consistent with the rebate portion of the fee schedule. The filing also amends the way the fees are expressed from ''per 100 shares'' to ''per share'' in order to accommodate odd-lots (which involve lots of less than 100 shares). The changes will take effect Monday, December 3, 2007.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(4) of the Act[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

No written comments were solicited or received with respect to the proposed rule change.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(2) thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2007–146 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–2007–146. 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 filings also will be available for inspection and copying at the principal office of the CBOE. 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–2007–146 and should be submitted on or before January 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24119 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56925; File No. SR–CBOE–2007–141]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 2.1 Relating to the Appointment of the Chairman and Members of CBOE's Business Conduct Committee

December 7, 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 November 27, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 2.1 pertaining to the appointment of the chairman and members of CBOE's Business Conduct Committee (''BCC''). The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.cboe.com*, and at the Commission's Public Reference Room.

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 IV 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 amend CBOE Rule 2.1 by modifying the BCC appointment process. Currently, the Exchange's Vice Chairman of the Board (''member Vice Chairman''), a member position, has the authority to: (i) Appoint the chairman and members of the BCC, with the approval of the Board; (ii) remove members in the BCC, with or without cause; and (iii) fill a vacancy in the BCC for the remainder of the term (collectively referred to as the ''Appointment Process'').[5] CBOE proposes to transfer the Appointment Process authority from the member Vice Chairman to the President [6] of the Exchange.[7] CBOE believes that the modification to this rule will enhance CBOE's disciplinary process because the BCC Appointment Process will now be the responsibility of a non-member

[5] *See* CBOE Rule 2.1(a).

[6] CBOE's President is the chief operating officer of CBOE, and, among other duties, oversees the Member and Regulatory Services Division of CBOE.

[7] CBOE believes that this rule amendment is similar to the International Securities Exchange (''ISE'') Rule 200, which grants its CEO the authority to appoint members of committees, including ISE's Business Conduct Committee with Board approval. *See* ISE Rule 200.

executive officer, who is not subject to the Exchange's disciplinary jurisdiction.

2. Statutory Basis

In modifying the BCC Appointment Process to place the responsibility with a non-member executive officer who is not subject to the Exchange's disciplinary jurisdiction, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and with Section 6(b)(5) of the Act[9] in particular, which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation among persons engaged in facilitating securities transactions, 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 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

The Exchange has designated this proposal as concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,[10] and Rule 19b–4(f)(3) thereunder,[11] which renders the proposal effective upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(3).

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–2007–141 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–2007–141. 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 CBOE. 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–2007–141 and should be submitted on or before January 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24120 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56927; File No. SR–CBOE–2007–145]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Hybrid Electronic Quoting Fee

December 7, 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 November 30, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Hybrid Electronic Quoting Fee. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.cboe.org/legal.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend CBOE's Hybrid Electronic Quoting Fee, which is applicable to all Market-Makers, RMMs, DPMs and e-DPMs (collectively ''liquidity providers'') in order to promote and encourage more efficient quoting.

Under the current fee, CBOE assesses all liquidity providers who are submitting electronic quotations to the Exchange in Hybrid and Hybrid 2.0 option classes a monthly fee of $450 per membership utilized.[5] CBOE also assesses or credits fees on liquidity providers that vary depending on: (i) the quality of the liquidity providers' quotation (a quotation is a bid and an offer); and (ii) the value of the underlying security and CBOE's bid in the option series.[6] The fee varies slightly in ''high premium series'' [7] with respect to Market-Makers and RMMs on the one hand, and DPMs and e-DPMs on the other hand due to the difference in their quoting obligations.

CBOE believes that the quote mitigation strategies it has implemented, including the Hybrid Electronic Quoting Fee, have been effective in mitigating quotations. Some liquidity providers have modified their quoting processes in response to the Hybrid Electronic Quoting Fee. Accordingly, CBOE believes that it would be appropriate to reduce slightly certain of the fees and, thus, reduce the total amount of revenue that CBOE collects from the Hybrid Electronic Quoting Fee. At the same time, CBOE believes that it would be beneficial to increase the amounts that are credited for competitive quotations that improve or match the NBBO, as an incentive to liquidity providers to submit competitive quotations. Specifically, CBOE proposes to amend certain of the fees that are imposed as part of the Hybrid Electronic Quoting Fee as follows:

- Increase the amount that a liquidity provider will be credited if its quotation improves the NBBO on at least one side of the market from $.02 to $.10 per 1,000 quotes.
- Increase the amount that a liquidity provider will be credited if its quotation matches the NBBO on both sides of the market from $.01 to $.03 per 1,000 quotes.
- Decrease the amount that a liquidity provider will be assessed if its quotation matches the NBBO on only one side of the market from $.02 to $0.00.
- In high premium series, decrease the amount that a Market-Maker or RMM will be assessed if its quotation matches the CBOE BBO (which is not the NBBO) on at least one side of the market from $.05 to $.04 per 1,000 quotes.
- Decrease the amount that a liquidity provider will be assessed if its quotation is a duplicate quote, or if it does not satisfy any of the above conditions, from $.05 to $.04 per 1,000 quotes.

The Exchange believes that the Hybrid Electronic Quoting Fee, as amended, is fair and reasonable and will continue to promote and encourage more competitive and efficient quoting and help to reduce quote traffic. The fee encourages and rewards liquidity providers that quote competitively, and imposes costs on liquidity providers that do not. CBOE intends to monitor the fee and may amend the fee in the future.

As before, the Hybrid Electronic Quoting Fee will be assessed by liquidity provider acronym. In the event a liquidity provider is utilizing more than one membership and submits electronic quotations for all of the memberships under the same acronym, the Hybrid Electronic Quoting Fee will be assessed per membership utilized by the liquidity provider. Because a liquidity provider's total credits cannot exceed the total debits assessed according to the schedule of credits and debits set forth in the two tables in Item 17 of the CBOE Fees Schedule, if the total credits were to exceed the total debits, the Hybrid Electronic Quoting Fee assessed to that liquidity provider would be $450.

If a liquidity provider is assessed the Hybrid Electronic Quoting Fee, the liquidity provider does not pay a member dues fee. The Exchange intends to implement this revised Hybrid Electronic Quoting Fee effective Monday, December 3, 2007.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] since it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–145 on the subject line.

[5] *See* Securities Exchange Act Release No. 56602 (October 3, 2007), 72 FR 57620 (October 10, 2007) (SR–CBOE–2007–116).

[6] The value of the underlying security is the closing price of the underlying security on the preceding trading day. The bid is the closing bid in the option series at CBOE on the preceding trading day.

[7] For purposes of this fee, ''high premium series'' are those series in which the underlying security is less than or equal to $100 and CBOE's bid is greater than $10, or those series in which the underlying security is greater than $100 and CBOE's bid is greater than 15% of the underlying security.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

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–2007–145. 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 CBOE. 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 No. SR–CBOE–2007–145 and should be submitted on or before January 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24122 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56919; File No. SR–ISE–2007–114]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

December 6, 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 December 3, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') 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 ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 1 Premium Product.[5] The text of the proposed rule change is available on the ISE's Web site (*http://www.ise.com*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Premium Products'' is defined in the Schedule of Fees as the products enumerated therein.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the PowerShares Golden Dragon Halter USX China Portfolio (''PGJ'').[6] The Exchange represents that PGJ[7] is eligible for options trading because it constitutes ''Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on PGJ.[8] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders[9] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee

[6] PowerShares™ and PGJ™ are trademarks of PowerShares Capital Management LLC (''PowerShares'' or the ''Adviser''). Halter Financial Group, Inc. (''Halter Financial'') is the index provider for the Golden Dragon Halter USX China Portfolio (''PGJ''). The ''USX China Index'' is a trademark of Halter Financial and has been licensed for use for certain purposes by the Adviser. All other trademarks and service marks are the property of their respective owners. PGJ is not sponsored, endorsed, sold or promoted by Halter Financial, and Halter Financial makes no representation regarding the advisability of investing in PGJ. Halter Financial and PowerShares have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on PGJ or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on PGJ or with making disclosures concerning options on PGJ under any applicable federal or state laws, rules or regulations. Halter Financial and PowerShares do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[7] The Exchange inadvertently included a reference to ILF options and requested that the Commission correct this error. Telephone conversation between Samir Patel, Assistant General Counsel, CBOE, and Sonia Trocchio, Special Counsel, Division of Trading and Markets, Commission (December 6, 2007).

[8] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). *See* Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR–ISE–2007–55).

[9] ''Public Customer Order'' is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. ''Public Customer'' is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

currently charged by the Exchange for ISE Market Maker transactions in equity options.[10] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.37 and $0.03 per contract, respectively.[11] Further, since options on PGJ are multiply-listed, the Payment for Order Flow fee shall apply to this product. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act[12] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2007–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–114 and should be submitted on or before January 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24088 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

[10] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[11] The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.16 and $0.03 per contract, respectively.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56920; File No. SR–NYSE–2007–111]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Rule 48 Permitting the Exchange to Declare an Extreme Market Volatility Condition

December 6, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to add NYSE Rule 48 to permit the Exchange to declare an extreme market volatility condition and suspend certain NYSE requirements relating to the opening of securities at the Exchange. The text of the proposed rule change is available on *http://www.nyse.com,* at NYSE, and at the Commission's Public Reference Room.

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 NYSE included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 is proposing to add NYSE Rule 48 to provide the Exchange with the ability to suspend the requirement to disseminate price indications and obtain Floor Official approval prior to the opening when extremely high market volatility could negatively affect the operation of the market by causing Floor-wide delays in the opening of securities on the Exchange. The Exchange believes that this rule change is necessary to ensure the fair and orderly operation of the Exchange market.

Background. NYSE Rule 123D(1) states that specialists are responsible for ensuring that registered securities open as close to the scheduled opening of trading on the Exchange as possible and that the opening be fair and orderly. When arranging the opening price of a security, specialists must make a professional assessment of market conditions at the time, including considering the balance of supply and demand as reflected by orders in the market, any price disparity from the prior close, and such other market conditions that would affect the opening price of a security.

While the specialist has ultimate responsibility under the rule for opening a security, in certain situations arising out of unusual market conditions, specialists must obtain prior Floor Official approval of the price at which they will open trading in the security. For example, the rule provides that specialists should consult with a Floor Official as soon as it becomes apparent that an unusual trading situation exists. The rule further provides that a specialist should consult with a Floor Governor if it is anticipated that the opening price may be at a significant disparity from the prior close.

In the event of a large pre-opening order imbalance or before a stock opens at a large price change, specialists must publicly disseminate a price indication at least once (and possibly more than once, depending on pre-opening interest) before opening a security. For securities priced under $10, such indications are mandatory if the price change is one dollar or more; for securities between $10 and $99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over $100, indications are required for price movements of five dollars or more. NYSE Rule 123D(1) requires supervision and approval by a Floor Official for all such indications.

In addition to these requirements, NYSE Rule 79A.30 requires specialists to obtain prior Floor Official approval if a security is going to open at one or more dollars away from the closing price at the Exchange when the closing price was under $20 a share, or two dollars or more away from the closing price at the Exchange when the closing price was $20 per share or more.

Proposed New Rule 48. The requirements described above are designed to ensure that in unusual situations, there is an impartial professional assessment of the proposed opening price and that advice for specialists is available when a significant disparity in supply and demand exists. The Exchange continues to believe that these requirements are, in most cases, desirable and enhance the fair and orderly operation of the market.

Recently, the equities markets world-wide have experienced unprecedented levels of volatility, which has caused unprecedented levels of pre-opening interest and volatility in the United States markets around the opening of the markets. When these extreme levels of volatility occur Floor-wide, the pre-opening requirements described above, instead of facilitating the fair and orderly operation of the markets, can have the paradoxical effect of impeding the fair and orderly operation of the market. For example, Exchange systems currently are programmed such that only NYSE operations staff can publish the mandatory pre-opening indications to the Consolidated Tape. On a regular trading day, when such notices occur in only a subset of its listed securities, the Exchange has sufficient resources to ensure the timely publication of such notices. But on days when the Exchange experiences extremely high Floor-wide market volatility that would stress the Exchange's staffing resources, the Exchange wants to ensure that openings are not delayed due to difficulties in timely publishing the mandatory indications.

Similarly, as noted above, in unusual market situations, Floor Officials, and in certain circumstances, Senior Floor Officials, Floor Governors, and Executive Floor Governors, need to be involved on a security-by-security basis before a stock can open at the Exchange. In the event of an extreme, Floor-wide market volatility condition, the Exchange is concerned that Floor Officials would not be able to timely review each security that faces an unusual market condition. In such case, the operation of the Exchange could be significantly impaired and investors adversely impacted because securities cannot be opened on a timely basis.

For example, on Friday, August 17, 2007, due to a confluence of factors, including the impact of the sub-prime mortgage crisis on market volatility and the Federal Reserve Board's announcement that it had approved a 50 basis point reduction in the primary credit rate, the securities markets experienced an extreme level of market volatility that affected securities across industry lines. At the Exchange, because of the overwhelming imbalance of pre-opening orders and price variations from the prior day's close, specialists were required to disseminate price indications and consult with and obtain prior Floor Official approval before opening trading in large numbers of stocks. Because of the number of securities impacted by that extreme market volatility, this process could not be completed for approximately 300 securities before the scheduled opening of trading. As a result, the Exchange experienced Floor-wide delays in the opening of securities that impaired the ability of the Exchange to operate efficiently. This Floor-wide delay also impacted those customers that had already submitted orders to the Exchange for execution and who had to wait until trading opened before such orders could be executed.

As proposed, in the event of extremely high market volatility that would have a Floor-wide impact on the ability of specialists to arrange for the timely opening of trading at the Exchange under the normal rules, NYSE Rule 48 would permit a qualified Exchange officer to declare an extreme market volatility condition. For purposes of the rule, a ''qualified Exchange officer'' means the Chief Executive Officer of NYSE Euronext, Inc. or his or her designee, or the Chief Executive Officer of NYSE Regulation, Inc., or his or her designee. While either may declare the extreme market volatility condition, each must make a reasonable effort to consult with the other prior to taking such action.

The proposed rule is intended to be invoked only in those situations where the potential for extreme market volatility would likely impair Floor-

wide operations at the Exchange by impeding the fair and orderly opening of securities. Accordingly, the proposed rule sets forth a number of factors that the qualified Exchange officer would have to consider before declaring such a condition, including: volatility during the previous day's trading session; trading in foreign markets before the open; substantial activity in the futures market before the open; the volume of pre-opening indications of interest; evidence of pre-opening significant order imbalances across the market; government announcements; news and corporate events; and any such other market conditions that could impact Floor-wide trading conditions.

Once the qualified Exchange officer has reviewed such factors and determined that an extreme market volatility condition exists, the qualified Exchange officer must make reasonable efforts to consult with Commission staff before making such a declaration. The qualified Exchange officer must also document the basis for making such a declaration. If the qualified Exchange officer is unable to reach Commission staff before the opening, he or she may declare such a condition, but must, as promptly as practicable in the circumstances, inform Commission staff of such declaration, and the basis for making such declaration.

Because the declaration of an extreme market volatility condition concerns the opening of securities at the Exchange, the proposed rule further provides that such condition must be declared before the scheduled opening of securities at the Exchange. Moreover, such declaration would be in effect only for the opening of that trading session (or reopenings during the same trading day following the imposition of a mandatory halt pursuant to NYSE Rule 80B). Should market conditions that led to the declaration continue on subsequent days, the Exchange would have to review on a day-by-day basis the factors necessitating such a declaration and on each day make a reasonable effort to consult with Commission staff as described above.

The Exchange notes that even when the dissemination and Floor Official (including Senior Floor Official and above) approval requirements are suspended, specialists *would remain* responsible for the fair and orderly opening of securities. Exchange rules already provide that when Floor Official approval is sought for certain actions, the specialist remains ultimately responsible for arranging the opening of securities at the Exchange. This obligation would remain unchanged. Even in the absence of price indications and a Floor Official's independent, impartial review of the opening, specialists will still be charged with ensuring that an opening price reflects market conditions and all participants have had a reasonable opportunity to participate. In the event of an extreme market volatility condition, the Exchange represents that it will review actions by the specialist at the opening to ensure that they have met their affirmative market maintenance obligations with respect to arranging a fair and orderly opening of securities at the Exchange.

The Exchange notes also that, if proposed Rule 48 were invoked, it would not affect situations where the opening of a security was delayed for reasons unrelated to extreme market volatility, such as where there is material news pending that justifies a regulatory halt under NYSE Rule 123D. In such cases, notwithstanding the invocation of proposed Rule 48, the specialist in the affected security would be expected to follow regular procedures for opening the security (that is, as if proposed Rule 48 had not been invoked).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under section 6(b)(5) [5] of the Act that an Exchange have rules that are designed 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.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) [6] of the Act and Rule 19b–4(f)(6) thereunder.[7] As required under Rule 19b–4(f)(6)(iii),[8] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii).[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to immediately implement proposed Rule 48, allowing the Exchange to utilize these new procedures to open trading in a security in a timely manner in extreme market volatility conditions that may occur within 30 days after the filing of this proposed rule change.[12] Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSE–2007–111 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–NYSE–2007–111. 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 NYSE. 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–NYSE–2007–111 and should be submitted on or before January 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24083 Filed 12–12–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56924; File No. SR–NYSEArca–2007–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Definition of and Listing Standards for Equity-Linked Notes under NYSE Arca Equities Rules 5.1(b)(14) and 5.2(j)(2)

December 7, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 25, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. On October 23, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. On December 5, 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, and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend its rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace''), which is the equities trading facility of NYSE Arca Equities. The Exchange is proposing to amend NYSE Arca Equities Rules 5.1(b)(14), the Exchange's definition of Equity-Linked Notes (''ELNs''), and 5.2(j)(2), the Exchange's listing standards for ELNs, to provide for greater flexibility in the listing criteria for ELNs.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 NYSE Arca 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 amend NYSE Arca Equities Rules 5.1(b)(14), the Exchange's definition of ELNs, and 5.2(j)(2), the Exchange's listing standards for ELNs, to provide for greater flexibility in the listing criteria for ELNs, as set forth below.[4] The Exchange notes that the Commission has approved similar proposals by the American Stock Exchange LLC (''Amex'').[5]

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Arca Equities Rule 5.2(j)(2) was approved by the Commission in September 1996, and was amended once in 2004. *See* Securities Exchange Act Release Nos. 37648 (September 5, 1996), 61 FR 48195 (September 12, 1996) (SR–PSE–96–23) and 50319 (September 7, 2004), 69 FR 55204 (September 13, 2004) (SR–PCX–2004–75).

[5] Amex's initial listing standards for ELNs are set forth in Section 107A of the Amex Company Guide, which was approved by the Commission in March 1990, and Section 107B of the Amex Company Guide, which was approved by the Commission in May 1993. These sections have been amended several times. The filings that are relevant to the topics discussed in this filing are as follows. *See* Securities Exchange Act Release Nos. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29) (''Amex March 1990 Release''); 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR–Amex–92–42) (''Amex May 1993 Release''); 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR–Amex–93–46) (''Amex August 1994 Release''); 36990 (March 20, 1996), 61 FR 13545 (March 27, 1996) (SR–Amex–95–44) (''Amex March 1996 Release''); 37783 (October 4, 1996), 61 FR 53246 (October 10, 1996) (SR–Amex–96–31) (''Amex October 1996 Release''); 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR–Amex–2002–110) (''Amex December 2002 Release''); and 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR–Amex–2007–34) (''Amex May 2007 Release'') (collectively ''Amex Releases'').

Number of Linked Securities. NYSE Arca Equities Rule 5.1(b)(14) currently defines ELNs as notes that are linked, in whole or in part, to the market performance of a common stock, non-convertible preferred stock, or sponsored American Depositary Receipts (''ADRs''), which may also be referred to as American Depositary Shares (''ADSs''), overlying such equity securities. The Exchange proposes to amend the definition to simply state that ELNs are defined as notes that are linked, in whole or in part, to the market performance of up to thirty common stocks or non-convertible preferred stocks. This change conforms to Section 107B of the Amex Company Guide.[6] The Exchange proposes to expand the number of stocks that may be linked to ELNs in order to accommodate the varying types of ELN products that are currently offered in the marketplace. The Exchange believes that expanding the number of stocks that may be linked to ELNs will also provide investors with enhanced investment flexibility. The Exchange also believes that there would be no investor protection concerns with expanding the number of stocks linked to ELNs because each linked stock is required to individually satisfy the applicable listing standards set forth in Rule 5.2(j)(2). The Exchange also proposes to delete the reference to ADRs in Rule 5.1(b)(14), as such matter is covered in the listing standards.

Issuer Listing Standards. Rule 5.2(j)(2)(A) currently provides that the issuer of ELNs must be an entity that is listed on a national securities exchange (or an affiliate of a listed company), with a minimum net worth of $150 million. Further, Rule 5.2(j)(2)(A) provides that the market value of an ELN offering, when combined with the market value of all other ELN offerings previously completed by the issuer and currently traded on a national securities exchange, may not be greater than 25% of the issuer's net worth at the time of issuance.

The Exchange proposes to amend the issuer listing standards under Rule 5.2(j)(2)(A) to provide for alternative minimum tangible net worth criteria for issuers of ELNs, similar to Section 107B(c) of the Amex Company Guide.[7] Under the proposed Rule, an issuer with minimum tangible net worth in excess of $250 million and otherwise substantially exceeds the pre-tax income from continuing operations of at least $750,000 in its last fiscal year, or in two of its last three fiscal years will not be limited to offerings of ELNs that do not exceed 25% of its net worth. The Exchange believes that this strikes an appropriate balance between the Exchange's responsiveness to innovations in the securities markets and its need to ensure the protection of investors and the public interest. Moreover, the Exchange believes that these changes will not have an adverse impact on the market for ELNs nor its investors since issuers with the lower net worth of $150 million will still be required to limit the amount of their ELN offerings to 25% of their net worth.

ELNs are dependent upon the individual credit of the issuer. This heightens the possibility that a holder of an ELN may not be able to receive full cash settlement at maturity. The Exchange believes that the proposed alternative net worth standard above, in addition to the proposed additional financial requirements set forth below, reasonably addresses this additional credit risk, and may even serve to minimize this risk.

The Exchange also proposes to amend the issuer listing standards under Rule 5.2(j)(2)(A) to apply additional financial standards to issuers, in addition to net worth, which correspond to those set forth in Section 107A(a) of the Amex Company Guide.[8] Specifically, the Exchange proposes to amend the issuer listing standards to require that an issuer of ELNs must have assets in excess of $100 million and stockholders' equity of at least $10 million. In addition, the Exchange proposes to amend the issuer listing standards to require that an issuer of ELNs must have one of the following: (i) Pre-tax income from continuing operations of at least $750,000 in its last fiscal year, or in two of its last three fiscal years; (ii) assets in excess of $200 million and stockholders' equity of at least $10 million; or (iii) assets in excess of $100 million and stockholders' equity of at least $20 million.

The Exchange proposes these additional financial standards to ensure that only the more financially sound companies will be eligible to have their ELNs listed on the Exchange. The Exchange believes that this is important considering the additional or contingent financial obligations created by ELNs, and should serve to protect investors and the public interest by ensuring that the ELNs listed on the Exchange have met predetermined financial criteria set by the Exchange.

ELN Listing Standards. Rule 5.2(j)(2)(B) currently provides that an issue of ELNs must have a minimum public distribution of one million ELNs, a minimum of 400 holders (provided, however, that if the ELN is traded in $1,000 denominations, there is no minimum number of holders), a minimum market value of $4 million, and a minimum term of one year.

The Exchange proposes to add an exception to the minimum public distribution standard in Rule 5.2(j)(2)(B) to provide that if the ELN is traded in $1,000 denominations, there is no minimum public distribution requirement. This change corresponds to Section 107A(b) of the Amex Company Guide.[9] The Exchange notes that, without the exception to the one million ELN minimum public distribution requirement, the Exchange would be unable to list ELNs in $1,000 dollar denominations having a market value of less than $1 billion. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in $1,000 denominations.

In addition, the Exchange proposes to add an exception to the holders requirement in Rule 5.2(j)(2)(B) to provide that if the ELNs are redeemable at the option of the holders thereof on at least a weekly basis, there is no minimum number of holders. This change also corresponds to Section 107A(b) of the Amex Company Guide.[10] The Exchange recently submitted a proposal to the Commission to add this exception to NYSE Arca Equities Rule 5.2(j)(6) (''Index-Linked Securities''),[11] which was based on a rule proposal by the New York Stock Exchange LLC recently approved by the Commission.[12] The Exchange also proposes to clarify that the holders requirement applies to ''public'' holders only.

The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of the ELNs and the performance of the underlying asset, such as a single security or basket of securities and/or securities index, as holders will be unlikely to sell their securities for less than their redemption value if they have a weekly right to redeem such securities for their full value. In addition, in the case of certain ELNs with a weekly redemption feature, the issuer may have the ability to issue new ELNs from time to time at market prices prevailing at the

[6] *See* Amex December 2002 Release, note 5, *supra.*

[7] *See* Amex October 1996 Release, note 5, *supra.*

[8] *See* Amex March 1990 Release, note 5, *supra.*

[9] *See* Amex May 2007 Release, note 5, *supra.*

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 56593 (October 1, 2007), 72 FR 57362 (October 9, 2007) (SR–NYSEArca–2007–96).

[12] *See* Securities Exchange Act Release No. 56271 (August 16, 2007), 72 FR 47107 (August 22, 2007) (SR–NYSE–2007–74).

time of sale, at prices related to market prices, or at negotiated prices. This provides a ready supply of new ELNs, thereby lessening the possibility that the market price of such securities will be affected by a scarcity of available ELNs for sale. The Exchange believes that it also assists in maintaining a strong correlation between the market price and the indicative value, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire ELNs from the issuer at that price.

The Exchange believes that the ability to list ELNs with these characteristics without any minimum number of units issued or holders is important to the successful listing of such securities. Issuers issuing these types of ELNs generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange traded fund issuance, in that the issue is launched without any significant distribution event and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. Investors will generally seek to purchase the securities at a point when the underlying index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it is difficult for an issuer to guarantee its ability to sell a specific number of units on the listing date. However, the Exchange believes that this difficulty in ensuring the sale of one million units or 400 public holders on the listing date is not indicative of a likely long-term lack of liquidity in the securities or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the securities or a successful two-sided market.

The Linked Securities. Rule 5.2(j)(2)(C) currently provides minimum standards applicable to the linked securities and the issuers of such securities. The Rule currently provides that the ELNs must be issued by either: (i) A U.S. company or (ii) a non-U.S. company that meets certain additional standards. The Exchange proposes to amend the language in the Rule to indicate that an issue of ELNs may be linked to more than one security and, therefore, more than one issuer of a security, in accordance with the Exchange's proposed amendments to Rule 5.1(b)(14), as set forth above. In addition, the Exchange proposes to amend the requirement that the issuer be a U.S. company (in order not to have to meet additional standards of a non-U.S. company) to require that the issuer be a reporting company under the Act listed on a national securities exchange. This change corresponds to Section 107B(e) of the Amex Company Guide.[13] The Exchange proposes this revision in order to encompass non-U.S. companies that have reporting requirements under the federal securities laws, which better addresses the Exchange's concern regarding the public availability of financial information for the issuers of the underlying securities. The Exchange believes that such information serves to protect investors and the public interest.

In Rule 5.2(j)(2)(C) and (D), the Exchange also proposes certain minor changes in order to clarify certain language, including the language regarding common shares and American Depositary Shares (''ADSs''), generally conforming it to Section 107B(e) of the Amex Company Guide.[14] In Rule 5.2(j)(2)(D), the Exchange also proposes to add the standard that if any non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the ELN may not be linked to that non-U.S. security. The Exchange believes that this standard makes sense in the context of the current Rule,[15] and notes that it corresponds to Section 107B(f) of the Amex Company Guide.[16] The Exchange believes that this additional standard is appropriate in that it limits the listing of ELNs linked to non-U.S. securities to those that have a significant amount of U.S. market trading volume, which provides reasonable assurance that the underlying non-U.S. securities are deliverable upon exercise of the ELNs.

Additional Changes. In Rule 5.2(j)(2)(E), the Exchange currently provides that it will distribute an information circular to ETP Holders prior to the commencement of trading of particular ELNs in order to provide guidance to ETP Holders regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs. The Exchange proposes to amend this requirement to provide that the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute an information circular to ETP Holders, which conforms with Section 107A of the Amex Company Guide.[17] In determining whether a circular is necessary, the Exchange will consider such characteristics of the issue as: Unit size and term; cash settlement; exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently listed on the Exchange. The Exchange proposes this change in order to allow the Exchange greater flexibility while still protecting investors.

The Exchange also proposes to add new Rule 5.2(j)(2)(F), which provides that ELNs will be treated as equity instruments, in accordance with Section 107B(g) of the Amex Company Guide.[18] The Exchange proposes this change to provide clarity to its ETP Holders that ELNs will be treated as equity instruments for, among other purposes, margin treatment.

The Exchange also proposes to add that the Exchange may approve for listing and trading ELN's pursuant to Rule 19b–4(e) under the Act if the requirements of proposed Rule 5.2(j)(2) are met.[19] The Exchange proposes this change to clarify that this requirement applies to ELN's.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] 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 engaging in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

[13] *See* Amex May 1993 Release, note 5, *supra*.

[14] *See* Amex August 1994 Release, note 5, *supra*.

[15] The current Rule provides that the issuance of ELNs relating to underlying non-U.S. securities cannot exceed certain percentage limits of the total outstanding shares of the underlying security. These percentage limits are tied to 20%, 50% and 70% of worldwide trading volume. Therefore, the Rule as currently in effect, does not contemplate less than 20% worldwide trading volume.

[16] *See* Amex March 1996 Release, note 5, *supra*.

[17] *See* Amex March 1990 Release, note 5, *supra*.

[18] *See* Amex May 1993 Release, note 5, *supra*.

[19] Telephone conference between Timothy J. Malinowski, Director, Exchange, and Michou H.M. Nguyen, Special Counsel, Division of Trading and Markets, Commission, on December 6, 2007.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

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

No written comments were solicited, or received, with respect to the proposed rule change, by NYSE Arca.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–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–NYSEArca–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–NYSEArca–2007–98 and should be submitted by January 3, 2008.

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 [22] and, in particular, the requirements of Section 6 of the Act.[23] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal seeks to conform the Exchange's rules for ELNs to the rules of the Amex that have previously been approved by the Commission.[25] Therefore, the Commission does not believe that the Exchange's proposal raises any novel regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for ELNs.

Therefore the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[26] to approve the proposed rule change on an accelerated basis.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Amex Rules 101 and 107; *see also* Amex Release, note 5 *supra*.

[26] 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change, as amended (SR–NYSEArca–2007–98), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

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[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6025]

Bureau of Educational and Cultural Affairs (ECA)

Request for Grant Proposals: Global Connections and Exchange Program.

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–08–13.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: February 8, 2008.

Executive Summary: The Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for the Global Connections and Exchange program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer the Global Connections and Exchange program in (1) Afghanistan and/or (2) the Palestinian Territories, West Bank only. The Bureau will award one grant for each program. The grantee organizations and/or their partners will select overseas schools and provide them with access to the Internet and related training to develop collaborative partnerships with U.S. schools. Thematic online projects will enhance mutual understanding as they encourage learning, research and free expression among participating schools. All Global Connections and Exchange activities will be undertaken in regular and consistent consultation with the Public Affairs Section (PAS) of the U.S. Embassy in Kabul and the U.S. Consulate in Jerusalem respectively. Please note that all Global Connections Exchange activities in the Palestinian Territories must be carried out according to all relevant laws and

policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza; organizations should consult with PAS—Jerusalem before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Global Connections and Exchange program is designed to introduce youth to a broad range of ideas and resources while enhancing the use of Information and Communication Technology (ICT) in schools. Through this program, overseas secondary schools will expand computer literacy skills, improve general education, and gain a deeper understanding of U.S. society, culture and values. American students will, in turn, gain a greater understanding of foreign languages and cultures.

Goals: The overarching goals of the program are: (1) To use technology as a democratization tool by providing access to information and encouraging free expression via the Internet; (2) to improve educational tools, resources and learning through the application of ICT and student-centered methodology; (3) to provide participants with the necessary skills to enable them to apply for exchange and study opportunities in the United States and overseas; (4) to generate personal and institutional ties across borders among students, educators and their schools; (5) to promote civil society and youth activism through collaborative projects and online resources; (6) to increase understanding of the United States through teacher and student exchanges.

The following outcomes will indicate a successful project:

- Participants will use the Internet as a source of information and means of communication.
- Teachers will use technology to complement existing curricula, enhance daily lessons, and create a student-centered classroom environment that enhances critical thinking and problem solving skills.
- Participants will develop professional and congenial relationships with people living in different societies and cultures through online and face-to-face interaction.
- Participants will gain interest in foreign countries and languages, exchange programs and international issues.
- Participants will increase their understanding of civil society and engage in service activities that benefit their communities.

Guidelines: The two grants are intended to build on a network of schools that have benefited from participation in the program for the past few years. Information about the two programs can be found at the program Web sites: Afghanistan: *http://www.connect-afghanistan.org/index.html;* West Bank: *http://www.connect-middleeast.org/.*

Applicants should identify specific objectives and measurable outcomes based on program goals and project specifications provided in the solicitation. Should organizations wish to apply for more than one program, they must submit a separate proposal for each since the two programs will be judged independently.

For both programs, applicants must demonstrate their capacity for conducting programs of this nature. This includes administrative infrastructure in the geographic areas and resources to link the foreign schools with schools in the United States to facilitate substantive online programs.

The grants to be awarded under this competition will be based upon the quality and responsiveness of proposals to the review criteria presented later in this document. Sub-grant and consortium arrangements are possibilities.

Applicants MUST refer to the Project Objectives, Goals and Implementation (POGI) guidelines for details.

II. Award Information

Type of Award: New Grant Agreement.

Fiscal Year Funds: FY 2008.

Approximate Total Funding: $350,000.

Approximate Number of Awards: 2 grants, one for each program.

Average Grant Award: Afghanistan: $150,000; West Bank: $200,000.

Anticipated Award Date: Pending availability of funds, April 2008.

Anticipated Project Completion Date: May 2009.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew grants awarded under this competition for at least two additional fiscal years, before openly competing it again.

III. Eligibility Information

III. 1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III. 2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III. 3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding grants that exceed $60,000 to support program and administrative costs required to implement this program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact The Office of Youth Programs, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 203–7513, and fax (202) 203–7529, e-mail Linda Beach at *BeachLF@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–08–13 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from *http://www.grants.gov.* Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the POGI, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Anna Mussman (*MussmanAP@state.gov*) and refer to the Funding Opportunity Number (ECA/PE/C/PY–08–13) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and seven (7) copies of the application should be sent per the instructions under IV.3e. ''Application Deadline and Methods of Submissions'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package. It contains the mandatory PSI and the POGI for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3.d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities

unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. ECA will provide two awards under this competition: $150,000 for Afghanistan and $200,000 for the West Bank. Applicants must submit a proposal and comprehensive budget for each program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: February 8, 2008.

Reference Number: ECA/PE/C/PY–08–13.

Methods of Submission

Applications may be submitted in one of two ways:

Methods of Submission:

Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

2. electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.1 Submitting printed applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–08–13, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the

Public Affairs Sections at the U.S. Embassy in Kabul or the Jerusalem Consulate General for review.

IV.3f.2—Submitting electronic applications. Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through *Grants.gov.*

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

1. Program Planning/Ability To Achieve Program Objectives: Proposals should exhibit originality, substance, and relevance to the Bureau's mission. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. Reviewers will assess the degree in which proposals engage American and overseas participants in collaborative projects, including those that focus on foreign languages, civil society and American studies, including English. With respect to anticipated program outcomes, reviewers will assess the degree to which the proposed outcomes of the project are realistic and measurable.

2. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, host families, schools, program venue and program evaluation) and program content (orientations, program meetings, resource materials and follow-up activities).

3. Organization's Record/Institutional Capacity: Reviewers will assess the applicant and its partners to determine if they offer adequate resources, expertise, and experience to fulfill program objectives. Applicants should demonstrate knowledge of each country's educational environment and the capacity to recruit and retain U.S. schools. Partner activities should be clearly defined. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting and J–1 Visa requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Multiplier Effect: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of institutional and individual linkages. Applicants should detail how participants will share newly -acquired knowledge and skills with others.

5. Project Monitoring and Evaluation: Proposals must include a plan to monitor the activity's success, both as the activities unfold and at the end of the program. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a description of performance indicators and measurement tools. Applicants should provide draft questionnaires or other techniques for use in surveying schools/participants to facilitate the demonstration of results.

6. Follow-On and Sustainability: Proposals should provide a strategy for the continuation of the schools' capacity to implement Internet access and online linkages without the Bureau's financial support.

7. Cost-effectiveness/Cost Sharing: Reviewers will analyze the budget for clarity and cost-effectiveness. They will also assess the rationale of the proposed budget and whether the allocation of funds is appropriate to complete tasks outlined in the project narrative. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Preference will be given to organizations whose proposals demonstrate a quality, cost-effective program.

VI. Award Administration Information

VI.1a. Award Notice:

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized

Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b The following additional requirements apply to this project:

For Assistance Awards involving the Palestinian Authority: All awards made under this competition must be executed according to all relevant laws and policies regarding assistance to the Palestinian Authority. Organizations should consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

VI.2. Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.'' OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;
2. One interim program report
3. Financial reports
4. Quarterly newsletters that highlight program activities and successes are strongly recommended.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request. All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements:

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required.

VII. Agency Contacts

For questions about this announcement, contact: Anna Mussman, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–7506 Fax number: (202) 203–7529, Internet address: *MussmanAP@state.gov*. All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–08–13.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 5, 2007.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affair, Department of State.

[FR Doc. E7–24188 Filed 12–12–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting, Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of a second meeting of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

DATES: The meeting will be held January 22–23, 2007, at 9 a.m.

ADDRESSES: The meeting will be held at Continental Airlines, 600 Jefferson Street, Concourse Level—Training Room C, Houston, TX 77002.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* for directions. POC: Mr. David Pitoniak, Phone: 713–324–3907. *Note:* Dress is Business Casual.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 215 meeting. The agenda will include:

- January 22:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review and Approval of Agenda for Fifth Plenary.
  - Review and Approval of Fourth Meeting Summary (215–045; RTCA Paper No. 295–07/SC215–011).
  - Review of Action List Outstanding Actions.
- DO–262 Normative Appendix.
  - Report from DO–262 Working Groups.
  - Review and Discussion of Remaining Sections.
- DO–270—Normative Appendix.
  - Overview of Approach for Normative Appendix.
  - Review of DO–270 Normative Appendix.
- Closing Plenary Session (Other Business, Schedule Next Plenary Meeting, Adjourn—Wednesday, January 23, 2007; 12 noon).

Attendance is open to the interested public but limited to space availability.

With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 7, 2007.

Editoral Note: This document was received at the Office of the Federal Register December 7, 2007.

Robert L. Bostiga,

RTCA Advisory Committee (Acting).

[FR Doc. 07–6037 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Finger Lakes Railway Corporation (Waiver Petition Docket Number FRA–2001–10215)

The Finger Lakes Railway Corporation (FGLK), seeks an extension of a waiver of compliance from certain provisions of Safety Glazing Standards, 49 CFR Part 223 that requires certified glazing for four passenger coaches, Car Numbers: FGLK 7201, FGLK 7202, FGLK 7601, and FGLK7602. In addition, FGLK petitions to add two more coaches in the waiver: FGLK 1642, and FGLK 1643.

The FGLK petition states that the cars are still operating in the same service environment with no changes to speed, or line segments and are following the conditions stipulated in the existing waiver. For the added two coaches, FGLK provided the following information in support of its petition. The cars were built in 1916, by the Harlen and Harrington Company for what used to be Norfolk & Western Railroad. The cars are all of steel construction. They were refurbished in 1989–1990, and used on the Maine Coast Railroad for excursion until 2002, when the cars were moved to New York State for use on the Niagara and Western New York Railroad excursion train.

The cars have been stored on FGLK in Geneva, New York, since October 2004. The current windows are sealed 3/8'' thick safety glass in Adlake Company Frames. There is no damage to the windows at this time. In all aspects, these two cars will be utilized in the same manner and in the same locations as the four cars currently operating under Docket Number FRA–2001–10215.

FGLK has requested updated quotations for FRA-compliant replacement window glass. These costs reflect the application of 49 CFR Part 223, glass into all passenger coaches currently operating under Docket Number FRA–2001–10215, and the two additional coaches that are being requested in this petition. FGLK stated that glass replacement continues to be an extremely high cost for an excursion operation and would jeopardize any chance of profitability for such operation for quite some time.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–10215) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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 (Volume 65, Number 70; Pages 19477–19478).

Issued in Washington, DC on December 10, 2007.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–24189 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Oregon Pacific Railroad (Waiver Petition Docket Number FRA–2007–28096)

The Oregon Pacific Railroad (OPR), seeks a waiver of compliance from certain provisions of Safety Glazing Standards, 49 CFR part 223 that requires certified glazing for four self-propelled switcher locomotives.

OPR operates on two disconnected rail lines in the Portland area consisting of the former East Portland Traction Company and Molalla Western Railway, which were merged in 1997, to become the OPR. Over the years, a waiver was granted in 1993, for several of the units. An upturn in business has required placing several units not in compliance into service, as follows:

OPR 100	SW–1 built 1952	600 h.p.
OPR 801	SW–8 built 1953	800 h.p.
OPR 802	SW–8 built 1954	800 h.p.
OPR 803	SW–8 built 1954	800 h.p.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–28096) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and 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 (Volume 65, Number 70; Pages 19477–19478).

Issued in Washington, DC, on December 10, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–24190 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2007–04

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory; potential catastrophic failure of locomotive reservoir tanks.

SUMMARY: In April 2005, FRA issued Safety Advisory 2005–02 in order to provide information to interested parties on the potential catastrophic failure of locomotive main reservoir tanks manufactured by R&R Metal Fabricators, Incorporated, and installed on General Electric Transportation System (GETS) locomotives. FRA is issuing this document, Safety Advisory 2007–04, in order to provide updated information related to this issue.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Railroad Safety Specialist, Motive Power and Equipment Division (RRS–14), FRA Office of Safety Assurance and Compliance, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6249 or Michael Masci, Staff Attorney, FRA Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6037.

SUPPLEMENTARY INFORMATION: In early 2005, GETS provided FRA information on the potential catastrophic failure of locomotive main reservoir tanks, manufactured by R&R Metal Fabricators, Incorporated, and installed on GETS locomotives. At that time, GETS reported that 5,826 suspect main reservoir tanks were manufactured between 1988 and 1995. Prior to the issuance of Safety Advisory 2005–02, four main reservoir tanks had failed catastrophically (ruptured) while in service. Since the issuance of Safety Advisory 2005–02, two additional reservoir tanks have failed and several others have been removed from service for various other reasons. GETS describes the ruptures as a rapid splitting and deformation of the reservoir tank along the longitudinal seam. Catastrophic failure of the main reservoir tank can result in serious injury or worse to anyone in the vicinity of the tank at the time of failure.

In 2005, GETS produced a list of approximately twenty-seven hundred (2,700) locomotives that have likely been equipped with the suspect reservoirs. GETS noted that additional suspect reservoirs may have been mounted onto GETS locomotives through maintenance and repair. No other locomotive manufacturer has produced any locomotives equipped with the suspect main reservoir tanks, and any attempt to do so would require major modifications to the mounting system. All suspect reservoir tanks can be identified by a name plate which shows R&R attached to the skin of the tank.

On September 12, 2007, GETS notified FRA that its earlier instructions to inspect and measure the reservoir tanks and replace only those that fail to meet the criteria proved to be only partially effective in identifying the at risk tanks. To minimize the possibility of any additional reservoir tank failures, GETS has advised all known owners and users of the affected locomotives equipped with the involved R&R Metal Fabricators, Incorporated reservoir tanks to replace them by September 30, 2008, or sooner. Any owner or user of these reservoir tanks should contact GETS for replacement of the reservoir tanks at no cost.

Recommended Action: In recognition of the need to assure safety, FRA recommends that railroads operating and owning GETS locomotives inspect the main reservoir tanks of such locomotives in service and any main reservoir tanks in inventory to determine if they were manufactured by R&R Metal Fabricators, Incorporated, between 1988 and 1995. If any such locomotive reservoir tanks are found, the owner or operator of the locomotive should contact Mr. Len Baran, GETS Product Manager, at General Electric Transportation Systems, 2901 East Lake Road, Building 14–410, Erie, Pennsylvania 16531, or by e-mail at *Len.Baran@trans.ge.com*, or by telephone at (814) 875–2769.

FRA may modify this Safety Advisory 2007–04, issue additional safety advisories, or take other appropriate

action necessary to ensure the highest level of safety on the nations railroads.

Issued in Washington, DC, on December 7, 2007.

Jo Strang,

Associate Administrator for Safety.

[FR Doc. E7–24196 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability: Alternative Transportation in Parks and Public Lands Program.

SUMMARY: This notice solicits proposals to compete for Fiscal Year (FY) 2008 funds through the Alternative Transportation in Parks and Public Lands program (ATPPL), administered by the Federal Transit Administration (FTA) in partnership with the Department of the Interior (DOI) and the U.S. Department of Agriculture's Forest Service. The purpose of the program is to enhance the protection of national parks and Federal lands, and increase the enjoyment of those visiting them. The program funds capital and planning expenses for alternative transportation systems such as buses and trams in federally-managed parks and public lands. Federal land management agencies and State, tribal and local governments, acting with the consent of a Federal land management agency, are eligible to apply. DOI, after consultation with and in cooperation with FTA, will determine the final selection and funding of projects.

DATES: Complete proposals must be received by the close of business on February 29, 2008.

ADDRESSES: Project proposals must be submitted to the FTA. Applicants are encouraged to submit proposals through the government-wide electronic grants Web site at *http://www.grants.gov*. Click on ''Find Grant Opportunities,'' then on ''Basic Search,'' and enter ''D2008–ATPL–650–001'' as the keyword. Submissions will also be accepted by e-mail, mail, or fax to: Scott Faulk, Office of Program Management, Federal Transit Administration, tel: 202–366–1660, fax: 202–366–7951, e-mail: *Scott.Faulk@dot.gov*, mail: 1200 New Jersey Ave., SE.; E44–417; Washington, DC 20590. The required project proposal template is available at grants.gov and on the program Web site at *http://www.fta.dot.gov/atppl*.

FOR FURTHER INFORMATION CONTACT: Contact Scott Faulk, Office of Program Management, Federal Transit Administration, 202–366–1660, e-mail: *Scott.Faulk@dot.gov*.

Applicants may also contact the following ATPPL points of contact at the Federal land management agencies:

- *National Park Service*: Mark H Hartsoe, *Mark_H_Hartsoe@nps.gov*; tel: 202–513–7025, fax: 202–371–6675, mail: 1849 C Street, NW., (MS2420); Washington, DC 20240–0001.
- *Fish and Wildlife Service*: Nathan Caldwell, *nathan_caldwell@fws.gov*, tel: 703–358–2205, fax: 703–358–2517, mail: 4401 N. Fairfax Drive, Room 634; Arlington, VA 22203.
- *Forest Service*: Ellen LaFayette, *elafayette@fs.fed.us*, tel: 703–605–4509, cell: 703–472–2456, fax: 703–605–1542, mail: 1400 Independence Avenue, SW.; Washington, DC 20250–1101. FedEx: USDA Forest Service, Engineering Suite RPC 500, 1601 N. Kent Street, Arlington, VA 22209.
- *Bureau of Land Management*: Linda Force, *linda_force@blm.gov*, tel: 202–557–3567, fax: 202–452–5046, mail: 1849 C Street, NW.; Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

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I. General Program Information

A. Authority

Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA–LU) established the Alternative Transportation in Parks and Public Lands (ATPPL) program (49 U.S.C. 5320). SAFETEA–LU authorized $97 million in funding for the program for FY 2006 through FY 2009. SAFETEA–LU authorized $25 million for FY 2008. Availability of funding is subject to congressional appropriations, which have not yet been finalized for FY 2008. No one project may receive more than 25 percent of available funds.

B. Background

Congestion in and around parks and public lands causes traffic delays and noise and air pollution that substantially detract from the visitor's experience and the protection of natural resources. In August 2001, the Department of Transportation (DOT) and DOI published a comprehensive study of alternative transportation needs in national parks and related Federal lands. The study identified significant alternative transportation needs at sites managed by the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service. Additionally, a supplement to this report identified Forest Service sites that would benefit from such services.

Section 3021 of SAFETEA–LU (49 U.S.C. 5320) addresses these needs by establishing a new program to fund alternative transportation projects in national parks and other Federal lands. The goals of the program are to:

- Conserve natural, historical, and cultural resources;
- reduce congestion and pollution;
- improve visitor mobility and accessibility;
- enhance visitor experience; and
- ensure access to all, including persons with disabilities.

C. Eligible Applicants

Eligible applicants are:

(1) Federal land management agencies, including the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the Bureau of Reclamation; and

(2) State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant. If the applicant is a State, tribal, or local government, a letter from the affected unit(s) of the Federal land management agencies expressing support for the project should be submitted with the project proposal.

D. Eligible Expenses

SAFETEA–LU defines alternative transportation as ''transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. Such term also includes a non-motorized transportation system (including the provision of facilities for pedestrians, bicycles, and non-motorized watercraft).''

A qualified project is a planning or capital project in or in the vicinity of a federally-owned or managed park, refuge, or recreational area that is open to the general public and meets the goals of the program. Operating expenses are not eligible under the

program. A project proposal may include up to 15 percent of project expenses for project administration, contingency, and oversight. As specified in 49 U.S.C. Section 5320(b)(5), the following types of projects are eligible:

Planning

1. Activities to comply with metropolitan and statewide planning provisions. (49 U.S.C. 5320(b)(5)(A) referencing 49 U.S.C. 5303, 5304, 5305).

2. Activities include planning studies for an alternative transportation system including evaluation of no-build and all other reasonable alternatives, traffic studies, visitor utilization studies, transportation analysis, feasibility studies, and environmental studies.

Capital

1. General Capital Expenses for Alternative Transportation System Projects

a. Eligible capital projects include all aspects of ''acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;''

b. Capital projects may include those projects operated by an outside entity, such as a public transportation agency, State or local government, private company engaged in public transportation, or private non-profit organization; and

c. Projects may also include the deployment/commercialization of alternative transportation vehicles that introduce innovative technologies or methods.

2. ''Fixed Guideway'' and Bus Projects

a. The SAFETEA–LU legislation includes language allowing eligibility of ''fixed guideway'' projects. These are defined as those transportation projects that run on a dedicated right of way, like a light rail, trolley, bus rapid transit, or any type of ferry system. For these types of projects, eligible projects can include:

i. Development of a new fixed guideway project;

ii. Rehabilitation or modernization of existing fixed guideway systems; and,

iii. Expansion of existing systems.

b. For bus or shuttle projects, eligible projects can include

i. Purchase of buses and related equipment;

ii. Replacement of buses and related equipment;

iii. Rehabilitation of buses and related equipment;

iv. Construction of bus-related facilities such as bus shelters; and,

v. Purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on August 10, 2005, with clean fuel vehicles.

3. The ATPPL program specifically includes these other eligible capital projects:

a. The capital costs of coordinating Federal land management agency public transportation systems with other public transportation systems.

b. Non-motorized transportation systems (including the provision of facilities for pedestrians, bicycles and non-motorized watercraft).

c. Water-borne access systems within or in the vicinity of an eligible area as appropriate and consistent with section 5320.

d. Any other alternative transportation project that

i. Enhances the environment;

ii. Prevents or mitigates an adverse impact on a natural resource;

iii. Improves Federal land management agency resource management;

iv. Improves visitor mobility and accessibility and the visitor experience;

v. Reduces congestion and pollution (including noise pollution and visual pollution); or

vi. Conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

In order to be considered for funding, a project must consist of one or more of the eligible activities listed above, meet the definition of alternative transportation, and contribute to the goals of the program.

Lease vs. Purchase

The capital cost of leasing vehicles is an eligible expense under the program. For vehicle acquisition projects, sponsors should compare the cost-effectiveness of leasing versus purchasing vehicles. Leasing may be particularly cost effective in circumstances in which transit service is only needed during a peak visitation period that lasts only a few months. In these cases, leasing a vehicle for a few months during the year may be less expensive than purchasing a vehicle that is then only used for a few months during the year. An ATPPL award can cover the capital cost of leasing vehicles but not the cost of operations.

Project sponsors should also compare the cost effectiveness of providing service versus contracting for service. The capital portion of contracted service is an eligible capital expense under the program. For example, if a public land contracts with a private bus company to provide a shuttle service with privately owned buses, the portion of the contract that covers the capital expense of the buses is an eligible expense under the ATPPL program. Operating expenses are not eligible under the program. Project sponsors will be asked to compare the cost-effectiveness of their preferred option to other alternatives in the financial sustainability portion of the proposal.

E. Proposal Evaluation Criteria and Other Considerations

It is anticipated that the demand for financial assistance through the ATPPL program will significantly exceed the funds available, and thus the selection process will be highly competitive. Project proposals will be evaluated based on how well the proposed project would meet the goals of the program identified in the legislation and in section I B of this notice. The criteria below, which are consistent with the considerations identified in section 5320(g)(2), aid evaluators in determining how well projects would meet these goals. The application template contains specific questions related to each of these criteria to guide the applicant in justifying the project.

Proposed capital projects will be evaluated based on the following criteria:

- Demonstration of Need.
  - Visitor mobility & experience current or anticipated problem.
  - Environmental current or anticipated problem.
- Visitor Mobility & Experience Benefits of Project.
  - Reduced traffic congestion.
  - Enhanced visitor mobility, accessibility, and safety.
  - Improved visitor education, recreation, and health benefits.
- Environmental Benefits of Project.
  - Protection of sensitive natural, cultural, and historic resources.
  - Reduced pollution (air, noise, visual).
- Financial Sustainability and Operational Efficiency.
  - Effectiveness in meeting management goals.
  - Realistic financial plan.
  - Cost effectiveness.
  - Partnering, funding from other sources, innovative financing.

Proposed planning projects will be evaluated based on the following criteria:

- Demonstration of Need.
  - Visitor mobility & experience current or anticipated problem.
  - Environmental current or anticipated problem.
- Methodology for Assessing Visitor Mobility & Experience Benefits of Project.
  - Reduced traffic congestion.
  - Enhanced visitor mobility, accessibility, and safety.
  - Improved visitor education, recreation, and health benefits.
- Methodology for Assessing Environmental Benefits of Project.
  - Protection of sensitive natural, cultural, and historical Resources.
  - Reduced pollution (air, noise, visual).
- Methodology for Assessing Operational Efficiency and Financial Sustainability of Alternatives.
  - Effectiveness in meeting management goals.
  - Realistic financial plan.
  - Cost effectiveness.
  - Partnering, funding from other sources.

A special note on non-motorized transportation systems: While non-motorized systems, such as trails, are eligible under the program, not all non-motorized systems will meet the goals of the program needed to be considered for funding. Like motorized systems, in order to be considered for funding, non-motorized systems must reduce or mitigate the number of auto trips by providing an alternative to travel by private auto. In addition, non-motorized systems must provide a high degree of connectivity within a transportation system. Finally, they should improve safety for motorized and non-motorized transportation system users.

Additional consideration will be given to projects based upon geographic diversity, balance between urban and rural projects, and balance in size of projects.

The program of projects may also be balanced by type of project, as categorized below, to best show accomplishments from the program.

- New alternative transportation systems—to show new systems made possible by this new program.
- Expansion or enhancement of an existing alternative transportation system—to demonstrate improvements and expansions enabled by the program.
- Rehabilitation or replacement of vehicles or facilities of existing alternative transportation systems—to support and sustain existing meritorious systems into the future.
- Planning studies—to prepare for new systems that can be funded in future years.

II. Guidelines for Preparing and Submitting Proposals

Applicants are encouraged to submit proposals through the Federal government-wide electronic grants Web site at *http://www.grants.gov*. Click on ''Find Grant Opportunities,'' then on ''Basic Search,'' and enter ''D2008–ATPL–650–001'' as the keyword. Submissions will also be accepted by e-mail, mail, or fax to the Federal Transit Administration using the contact information found in the **ADDRESSES** section of this notice. The required project proposal template as well as guidance on completing a proposal can be found on grants.gov and on the program Web site at *http://www.fta.dot.gov/atppl*. There are separate proposal templates for planning and capital (''implementation'') projects. Project proposals must adhere to the page limits listed on the proposal templates.

A ''webinar''-style workshop to provide information on the program and guidance on applying will be held in January. Check the Web site at *http://www.fta.dot.gov/atppl* for more details. If you do not have adequate internet access you may request hard copies of the webinar presentations and information on how to phone in to the webinar from Scott Faulk at 202–366–1660.

If applicants would like to apply for funds appropriated for future fiscal years, applicants must reapply each year. An applicant may also propose a project that would expend money in multiple years even though the award is from one year's worth of appropriated ATPPL program funds. The project, would however, need to be ready to begin and need to be completed in a reasonable period of time, as evaluated on a case by case basis. In sum, the period of performance of the award is separate from the year of funds of the award.

III. Selection and Notification

Selected projects will be announced in summer 2008. The DOI will notify each Federal land management agency of projects awarded for sites under the agency's jurisdiction. FTA will publish the list of all selected projects and funding levels in the **Federal Register**, as well as in its annual report to Congress on the ATPPL program submitted as part of its Annual Report on New Starts in early February 2009. Criteria and application procedures may be reassessed for subsequent years.

IV. Additional Program Information

A. Funds Administration

Once proposals have been reviewed and projects have been selected, FTA will award funds to the lead project sponsor to implement the project. These funds will be administered according to Federal requirements as well as the appropriate policies, guidelines and rules of the pertinent agencies.

For projects directly administered by a Federal land management agency, these funds will be administered by interagency agreement between the FTA and the respective agency. For programs administered by a State, tribal, or local governmental authority, these funds will be administered through a grant administered by FTA.

B. Program Requirements and Oversight

The requirements for recipients of funding through the program can be found at *http://www.fta.dot.gov/atppl* under ''Requirements for Recipients of Funding.'' This document also describes the oversight FTA will provide for this program.

C. Performance Measures

Participants may be asked to compile data for use in measuring program performance.

D. Technical Assistance, Planning, and Research

The ATPPL program allows DOT to spend not more than ten percent of program funds to carry out planning, research, and technical assistance activities. FTA will oversee the funds allocated to technical assistance to assist program participants in planning, implementing, and evaluating alternative transportation projects. In addition, FTA will be responsible for the provision of planning guidance and dissemination of research findings. A limited number of technical assistance visits are available to assist potential project sponsors in the initial stages of planning. Project sponsors or potential project sponsors may contact the relevant Federal land management agency headquarters contact, or the FTA contact in the **ADDRESSES** section, to request technical assistance or provide ideas of types of activities that would be particularly helpful in furthering the goals of the program.

Issued in Washington, DC this 7th day of December 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–24129 Filed 12–12–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35094]

The Kansas City Southern Railway Company—Acquisition and Operation Exemption—Columbus and Greenville Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323 *et seq.*, for The Kansas City Southern Railway Company (KCSR), a Class I rail carrier, to acquire and operate a 2.23-mile rail line owned by Columbus and Greenville Railway Company (CAGY), a Class III rail carrier, subject to CAGY's reservation of nonexclusive limited local trackage rights.[1] The rail line extends between, at one end, a connection between KCSR's Artesia Subdivision and CAGY's main track near KCSR milepost 230.4 and, at the other end, two connections between CAGY's main track and KCSR's Louisville Subdivision near KCSR milepost 88.5, near West Point, MS.[2]

DATES: Petitioner has asked for expedited consideration of the petition. Consequently, the exemption will be effective on December 20, 2007. Petitions to stay must be filed by December 19, 2007. Petitions to reopen must be filed by January 14, 2008.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35094, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: William A. Mullins, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision served on December 13, 2007. To purchase a copy of the full decision, write, 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.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 6, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–24037 Filed 12–12–07; 8:45 am]

BILLING CODE 4915–01–P

[1] Pursuant to an agreement between petitioners, CAGY would be permitted to traverse the involved line via its reserved nonexclusive local trackage rights, but it would not be permitted to serve shippers on the line that had not been previously served when CAGY owned the line.

[2] The terminal mileposts are points on separate KCSR subdivisions to which the line connects at either end (CAGY has indicated that the line does not have mileposts of its own). The mileposts therefore cannot be used for purposes of calculating the actual mileage of the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35104]

East Penn Railroad, LLC—Operation Exemption—Kutztown Transportation Authority

East Penn Railroad, LLC (ESPN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate a 4.12-mile rail line owned by Kutztown Transportation Authority (KTA), a municipal authority organized under the Pennsylvania Municipal Authorities Act of 1954. The line is located between milepost 0.17 at Topton, PA, and milepost 4.29 at Kutztown, PA.

ESPN advises that its predecessors, Penn Eastern Rail Lines, Inc. (PERL), and East Penn Railway, Inc. (EPRY), had entered into an agreement with KTA dated July 25, 2005, to replace the previous lease agreement for the line, but had failed to obtain prior approval for the new agreement. However, ESPN indicates that it or one of its predecessors has been the operator on the line for over 10 years.[1]

ESPN certifies that its projected annual revenues as a result of the transaction will not exceed $5 million and will not result in the creation of a Class II or Class I carrier. The earliest this transaction could have been consummated was on or after the December 27, 2007 effective date of the exemption (30 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 December 20, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35104, must be filed with the Surface Transportation Board, 395 E Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 7, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–24155 Filed 12–12–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The subject line was acquired by PERL and was formerly leased and operated by EPRY. *See* Penn Eastern Rail Lines, Inc.—Acquisition and Operation Exemption—Lines of Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc., STB Finance Docket No. 33512 (STB served Dec. 1, 1997). Also, Mr. John C. Nolan, an individual, controlled EPRY and obtained authority to control PERL. *See* John C. Nolan—Control Exemption—Penn Eastern Rail Lines, Inc., STB Finance Docket No. 34223 (STB served July 22, 2002). Mr. Nolan merged PERL and EPRY into ESPN. *See* John C. Nolan, Penn Eastern Rail Lines, Inc., and East Penn Railways, Inc.—Corporate Family Transaction Exemption, STB Finance Docket No. 35056 (STB served July 13, 2007). According to ESPN, Mr. Nolan subsequently sold ESPN to Regional Rail, LLC, a noncarrier, which does not control any other rail carriers.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35097]

Massachusetts Coastal Railroad, LLC—Modified Rail Certificate

On November 29, 2007,[1] Massachusetts Coastal Railroad, LLC (MC)[2] filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public*

[1] This notice was initially filed on November 9, 2007, but a substantial amendment thereto was subsequently filed on November 29. *See infra* note 3. November 29 will therefore be considered the filing date.

[2] MC is a Massachusetts Limited Liability Company and a wholly owned subsidiary of noncarrier Cape Rail, Inc.

Convenience and Necessity, to operate segments of rail lines owned by the Commonwealth of Massachusetts, acting by and through the Massachusetts Executive Office of Transportation and Public Works (EOTPW). The segments over which rail service will be performed are as follows: (1) Buzzards Bay Secondary, extending from Middleboro, MA (milepost 1.5), to Buzzards Bay, MA (milepost 19.9), a distance of approximately 18.4 miles; (2) Hyannis Secondary, extending from Bourne, MA (milepost 0.0), to Hyannis, MA (milepost 24.3), a distance of approximately 24.3 miles; (3) South Dennis Secondary, extending from Yarmouth Junction, MA (milepost 0.0), to Station Avenue in Yarmouth (milepost 2.81), a distance of approximately 2.8 miles; (4) Falmouth Secondary, extending from Bourne (milepost 0.0) to Falmouth, MA (milepost 6.8), a distance of approximately 6.8 miles; (5) Watuppa Branch, extending from milepost 6.0 west of North Dartmouth, MA, to Westport, MA (milepost 10.66), a distance of approximately 4.7 miles; and (6) Dean Street Industrial Track, between mileposts 0.0 and 1.5, in Taunton, MA, a distance of approximately 1.5 miles. The lines will connect at Middleboro and Taunton with CSX Transportation, Inc. (CSXT), and at milepost 6.0 west of North Dartmouth with Bay Colony Railroad Corporation (Bay Colony).[3]

The involved lines were abandoned pursuant to Section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744) and were acquired by the Commonwealth of Massachusetts from the estate of the Penn Central Transportation Company. The Interstate Commerce Commission issued modified rail certificates to Bay Colony for operation of the involved lines and certain other lines. *See Bay Colony Railroad Corporation—Modified Rail Certificate,* Finance Docket No. 29963 (ICC served June 29, 1982 and Sept. 24, 1987).

Pursuant to an agreement, MC and EOTPW have agreed that MC will operate the lines for a period of 10 years beginning January 6, 2008, and extending to December 31, 2017. The agreement provides for three extension terms of 5 years each pursuant to written mutual agreement.

The rail segments qualify for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

MC states that no subsidy is involved and that there are no preconditions for shippers to meet in order to receive rail service.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 5, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–23926 Filed 12–12–07; 8:45 am]

BILLING CODE 4915–01–P

[3] As a result of a response filed on November 20, 2007 by Bay Colony, MC filed an amendment to the notice on November 29, 2007, requesting that the Board correct that part concerning MC's connections, as set forth here. Changes to the Watuppa segment description (segment (5)) have also been made as a result of the November 20 and 29 filings.

MC adds that it is currently developing a proposed trackage rights arrangement with Bay Colony whereby MC would be able to operate over Bay Colony's trackage between the MC/Bay Colony connection at milepost 6.0 and the Bay Colony/CSXT connection at milepost 0.08. If and when such an arrangement is reached, MC states that it will make the required Board filings.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 7, 2007.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 14, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–XXXX.

Type of Review: New Collection.

Title: RP–2007–XX (RP–155430–05), Accelerated Appeals Procedure.

Description: This revenue procedure establishes the Accelerated Appeals Procedure for taxpayers who are issued a proposed assessment of penalty under section 6707 of 6707A of the Internal Revenue Code. These taxpayers may request that the Office of Appeals review and consider resolution of the proposed assessment. The information to be collected under the revenue procedure is needed to initiate, and will be used to conduct, the Accelerated Appeals Procedure.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 430 hours.

OMB Number: 1545–1360.

Type of Review: Extension.

Title: PS–102–88 (Final) Income, Gift and Estate Tax.

Description: The regulation provides guidance to individuals or fiduciaries: 1) For making a qualified domestic trust election on the estate tax return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and 2) for filing the annual returns that such an election may require.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 6,150 hours.

OMB Number: 1545–1629.

Type of Review: Extension.

Title: Paid Preparer's Earned Income Credit Checklist.

Form: 8867.

Description: Form 8867 helps preparers meet the due diligence requirements of Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligency requirements.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 14,979,521 hours.

OMB Number: 1545–1889.

Type of Review: Extension.

Title: Notice 2004–59, Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

Description: This notice sets forth answers to certain questions raised by the public when there is an amendment to an election to take advantage of the alternative deficit reduction contribution described in Public Law 108–218.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 400 hours.

OMB Number: 1545–1898.

Type of Review: Extension.

Title: Revenue Procedure 2004–47, Relief From Ruling Process For Making Late Reverse QTIP Election.

Description: This revenue procedure provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee the taxpayer may file certain documents with the Cincinnati Service Center directly to request relief.

Respondents: Individuals or households.

Estimated Total Burden Hours: 54 hours.

OMB Number: 1545–1891.

Type of Review: Revision.

Title: Form 13560, HCTC Health Plan Administrator (HPA) Return of Funds Form.

Form: 13560.

Description: Form 13560 is completed by Health Plan Administrators (HPAs) and accompanies a return of funds in order to ensure proper handling. This form serves as supporting documentations for any funds returned by an HPA and clarifies where the payment should be applied and why it is being sent.

Respondents: State, Local or Tribal Governments.

Estimated Total Burden Hours: 50 hours.

OMB Number: 1545–1631.

Type of Review: Extension.

Title: REG–209619–93 (Final) Escrow Funds and Other Similar Funds.

Description: Section 468B(g) requires that income earned on escrow accounts, settlement funds, and similar funds be subject to current taxation. This section authorizes the Secretary to issue regulations providing for the current taxation of these accounts and funds as grantor trusts or otherwise. The proposed regulations would amend the final regulations for qualified settlement funds (QFSs) and would provide new rules for qualified escrows and qualified trusts used in deferred section 1031 exchanges; pre-closing escrows; contingent at-closing escrows; and disputed ownership funds.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 3,720 hours.

OMB Number: 1545–1639.

Type of Review: Extension.

Title: REG–106012–98 (Final) Definition of Contribution in Aid of Construction under section 118(c).

Description: The regulations provide guidance with respect to Sec. 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 300 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–24143 Filed 12–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request; Proposed Revision to Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A and Schedules 1, 2, and 3, and Form 1040EZ, and All Attachments to These Forms

December 7, 2007.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed at the end of this notice, and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 14, 2008 to be assured of consideration.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) in OMB's database of approved information collections.

The Individual Taxpayer Burden Model (ITBM) estimates the levels of burden experienced by individual taxpayers when complying with the Federal tax laws. This model reflects major changes over the past two decades in the way taxpayers prepare and file their returns; more than 85 percent of all individual tax returns are prepared utilizing computer software, either by the taxpayer or a paid provider, and less than 15 are prepared manually. The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers rather than the forms they use. Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return, e.g. with software or paid preparer, and the taxpayer's activities, e.g. recordkeeping and tax planning.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with the Federal tax system. The time expended and the out-of-pocket costs are estimated separately. The methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer, filing methods, and income levels.

Indicators of complexity in tax laws as reflected in tax forms and instructions are incorporated in the model. The preparation methods are:

- Self-prepared without software.
- Self-prepared with software.
- Used a paid preparer.

The types of taxpayer activities measured in the model are:

- Recordkeeping.
- Form completion.
- Form submission (electronic and paper).

• Tax planning (this activity completed at individual taxpayer discretion).
• Use of services (IRS and paid professional).
• Gathering tax materials.

The methodology incorporates results from a burden survey of 14,932 taxpayers conducted in 2000 and 2001, and estimates taxpayer burden based on those survey results. Summary level results using this methodology are presented in the table below.

Taxpayer Burden Estimates

Time burden is broken out by taxpayer activity. The largest component of time burden is record keeping at roughly 58 percent for all taxpayers, as opposed to form completion and submission at only about 14 percent. In addition, the time burden associated with form completion and submission activities are closely tied to preparation method. That is, these time burden estimates fluctuate according to preparation method.

Both time and cost average burdens are national averages, and do not necessarily reflect a ''typical'' case. The average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ in 2006 was 26.5 hours, with an average cost of $207 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 had an average burden of 34.0 hours, and taxpayers filing Form 1040A and Form 1040EZ averaged 10.2 hours. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer and geographic area.

The data shown are the best estimates from tax returns filed for 2006 currently available as of July 20, 2007. The estimates are subject to change as new forms and data become available. The estimates do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer errors, implying a lower overall post-filing burden.

Taxpayer Burden Model

The tables below show burden estimates by form type for Tax Years 2004, 2005, and 2006. The data are being presented for these three years, because the 2006 estimates are based on an updated version of the ITBM. This updated version takes into account technical adjustments using improved data on taxpayer filing activities. Note that changes in burden reported for TY 2004 and 2005 versus prior published estimates, reflect not a change in actual burden but rather a change in methodology. Therefore, three years of data are presented below, based on the new methodology to show relative changes in burden over the past three years.

PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C-EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2 and 3; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to some of the forms. These changes have resulted in an overall increase of 361,564,830 total hours in taxpayer burden previously approved by OMB.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 133,912,900.

Total Estimated Time: 3.55 billion hours (3,548,691,850 hours).

Estimated Time Per Respondent: 26.5 hours.

Total Estimated Out-of-Pocket Costs: $27.7 billion ($27,719,970,300).

Estimated Out-of-Pocket Cost Per Respondent: $207.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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 to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

BILLING CODE 4830–01–P

Table 1. Tax Year 2006 Taxpayer Burden Estimates for Individual Taxpayers, by Activity

Major Form Filed or Type of Taxpayer		Time Burden (hours)						Money Burden
		Average Time						
	Percentage of Returns	Average Total Time	Record Keeping	Tax Planning	Form Completion	Form Submission	All Other	Average Costs
All Taxpayers	100%	26.5	15.3	4.5	3.3	0.5	2.8	$ 207
Major Forms Filed								
1040	68%	34.0	20.3	5.9	3.8	0.6	3.4	$ 268
1040A & 1040EZ	32%	10.2	4.3	1.6	2.4	0.5	1.4	$ 75
Type of Taxpayer								
Wage and Investment	72%	14.1	5.8	3.2	3.0	0.5	1.6	$ 114
Self-Employed	28%	58.1	39.5	7.9	4.3	0.7	5.8	$ 444

Table 2. Tax Year 2005 Taxpayer Burden Estimates for Individual Taxpayers, by Activity

Major Form Filed or Type of Taxpayer		Time Burden (hours)						Money Burden
		Average Time						
	Percentage of Returns	Average Total Time	Record Keeping	Tax Planning	Form Completion	Form Submission	All Other	Average Costs
All Taxpayers	100%	26.0	14.8	4.5	3.3	0.5	2.8	$ 195
Major Forms Filed								
1040	68%	33.4	19.8	5.9	3.7	0.6	3.4	$ 253
1040A & 1040EZ	32%	10.0	4.1	1.6	2.4	0.5	1.4	$ 71
Type of Taxpayer								
Wage and Investment	72%	13.8	5.6	3.2	2.9	0.5	1.6	$ 107
Self-Employed	28%	57.0	38.4	7.9	4.2	0.7	5.8	$ 420

Table 3. Tax Year 2004 Taxpayer Burden Estimates for Individual Taxpayers, by Activity

Major Form Filed or Type of Taxpayer		Time Burden (hours)						Money Burden
		Average Time						
	Percentage of Returns	Average Total Time	Record Keeping	Tax Planning	Form Completion	Form Submission	All Other	Average Costs
All Taxpayers	100%	25.4	14.6	4.2	3.3	0.5	2.8	$ 185
Major Forms Filed								
1040	68%	32.5	19.5	5.4	3.7	0.6	3.4	$ 242
1040A & 1040EZ	32%	9.8	4.1	1.5	2.4	0.5	1.4	$ 62
Type of Taxpayer								
Wage and Investment	72%	13.4	5.5	2.9	2.9	0.5	1.6	$ 97
Self-Employed	28%	55.8	37.9	7.3	4.2	0.7	5.7	$ 408

Note: Detail may not add to total because of rounding.

BILLING CODE 4830–01–C

APPENDIX

Form	Filed by individuals and others	Title
1040		U.S. Individual Income Tax Return.
1040 A		U.S. Individual Income Tax Return.
1040 EZ		Income Tax Return for Single and Joint Filers With No Dependents.
1040 X		Amended U.S. Individual Income Tax Return.
1040 NR		U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ		U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
926	X	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	X	Application To Use LIFO Inventory Method.

APPENDIX—Continued

Form	Filed by individuals and others	Title
972	X	Consent of Shareholder To Include Specific Amount in Gross Income.
982	X	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040 A–SCH 1		Interest and Ordinary Dividends for Form 1040A Filers.
1040 A–SCH 2		Child and Dependent Care Expenses for Form 1040A Filers.
1040 A–SCH 3		Credit for the Elderly or the Disabled+F66 for Form 1040A Filers.
1040 ES–E		Estimated Tax for Individuals.
1040 ES–OCR		Estimated Tax for Individuals (Optical Character Recognition Without Form 1040V).
1040 ES–OCR–V		Payment Voucher.
1040 ES–OTC		Estimated Tax for Individuals.
1040 ES/V–OCR		Estimated Tax for Individuals (Optical Character Recognition With Form 1040V).
1040 SCH A		Itemized Deductions.
1040 SCH B		Interest and Ordinary Dividends.
1040 SCH C	X	Profit or Loss From Business.
1040 SCH C–EZ	X	Net Profit From Business.
1040 SCH D		Capital Gains and Losses.
1040 SCH D–1		Continuation Sheet for Schedule D.
1040 SCH E	X	Supplemental Income and Loss.
1040 SCH EIC		Earned Income Credit.
1040 SCH F	X	Profit or Loss From Farming.
1040 SCH H	X	Household Employment Taxes.
1040 SCH J		Income Averaging for Farmers and Fishermen.
1040 SCH R		Credit for the Elderly or the Disabled.
1040 SCH SE		Self-Employment Tax.
1040 V		Payment Voucher.
1040 V–OCR		Payment Voucher.
1040 V–OCR–ES		Payment Voucher.
1045	X	Application for Tentative Refund.
1116	X	Foreign Tax Credit.
1128	X	Application To Adopt, Change, or Retain a Tax Year.
1310		Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106 EZ		Unreimbursed Employee Business Expenses.
2106		Employee Business Expenses.
2120		Multiple Support Declaration.
2210 F	X	Underpayment of Estimated Tax by Farmers and Fishermen.
2210	X	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2350		Application for Extension of Time To File U.S. Income Tax Return.
2439	X	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441		Child and Dependent Care Expenses.
2555 EZ		Foreign Earned Income Exclusion.
2555		Foreign Earned Income.
2848	X	Power of Attorney and Declaration of Representative.
3115	X	Application for Change in Accounting Method.
3468	X	Investment Credit.
3520	X	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	X	General Business Credit.
3903		Moving Expenses.
4029		Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070 A		Employee's Daily Record of Tips.
4070		Employee's Report of Tips to Employer.
4137		Social Security and Medicare Tax on Unreported Tip Income.
4136	X	Credit for Federal Tax Paid On Fuels.
4255	X	Recapture of Investment Credit.
4361		Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	X	Depreciation and Amortization.
4563		Exclusion of Income for Bona Fide Residents of American Samoa.
4684	X	Casualties and Thefts.
4797	X	Sales of Business Property.
4835		Farm Rental Income and Expenses.
4852		Substitute for Form W–2 or Form 1099–R.
4868		Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4952	X	Investment Interest Expense Deduction.
4970	X	Tax on Accumulation Distribution of Trusts.
4972	X	Tax on Lump-Sum Distributions.
5074		Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	X	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329		Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5471 SCH J	X	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.

APPENDIX—Continued

Form	Filed by individuals and others	Title
5471 SCH M	X	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH N	X	Return of Officers, Directors, and 10%-or-More Shareholders of a Foreign Person Holding Company.
5471 SCH O	X	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5471	X	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5713 SCH A	X	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	X	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	X	Tax Effect of the International Boycott Provisions.
5713	X	International Boycott Report.
5754	X	Statement by Person(s) Receiving Gambling Winnings.
5884	X	Work Opportunity Credit.
6198	X	At-Risk Limitations.
6251		Alternative Minimum Tax—Individuals.
6252	X	Installment Sale Income.
6478	X	Credit for Alcohol Used as Fuel.
6765	X	Credit for Increasing Research Activities.
8082	X	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
6781	X	Gains and Losses From Section 1256 Contracts and Straddles.
8271	X	Investor Reporting of Tax Shelter Registration Number.
8275 R	X	Regulation Disclosure Statement.
8275	X	Disclosure Statement.
8283	X	Noncash Charitable Contributions.
8332		Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379		Injured Spouse Claim and Allocation.
8396		Mortgage Interest Credit.
8453 OL		U.S. Individual Income Tax Declaration for an IRS e-file Online Return.
8453		U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582 CR	X	Passive Activity Credit Limitations.
8582	X	Passive Activity Loss Limitations.
8586	X	Low-Income Housing Credit.
8594	X	Asset Acquisition Statement.
8606		Nondeductible IRAs.
8609 SCH A	X	Annual Statement.
8611	X	Recapture of Low-Income Housing Credit.
8615		Tax for Children Under Age 14 With Investment Income of More Than $1,600.
8621 A	X	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
8621	X	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8689		Allocation of Individual Income Tax To the Virgin Islands.
8693	X	Low-Income Housing Credit Disposition Bond.
8697	X	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	X	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812		Additional Child Tax Credit.
8814		Parents' Election To Report Child's Interest and Dividends.
8815		Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818		Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	X	Orphan Drug Credit.
8821	X	Tax Information Authorization.
8822	X	Change of Address.
8824	X	Like-Kind Exchanges.
8826	X	Disabled Access Credit.
8828		Recapture of Federal Mortgage Subsidy.
8829		Expenses for Business Use of Your Home.
8830	X	Enhanced Oil Recovery Credit.
8832	X	Entity Classification Election.
8833	X	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
8834	X	Qualified Electric Vehicle Credit.
8835	X	Renewable Electricity and Refined Coal Production Credit.
8836 SCH A		Third Party Affidavit.
8836 SCH B		Third Party Affidavit.
8836 SP		Comprobante de Residencia para los Hijos(as) Calificados(as).
8836 SP–SCH A		Declaracion Jurada del Tercero.
8836 SP–SCH B		Declaracion Jurada del Tercero.
8836		Qualifying Children Residency Statement.
8838	X	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839		Qualified Adoption Expenses.
8840		Closer Connection Exception Statement for Aliens.
8843		Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	X	Empowerment Zone and Renewal Community Employment Credit.
8845	X	Indian Employment Credit.
8846	X	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

APPENDIX—Continued

Form	Filed by individuals and others	Title
8847	X	Credit for Contributions to Selected Community Development Corporations.
8853		Archer MSAs and Long-Term Care Insurance Contracts.
8854		Initial and Annual Expatriation Information Statement.
8858	X	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	X	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859		District of Columbia First-Time Homebuyer Credit.
8860	X	Qualified Zone Academy Bond Credit.
8861	X	Welfare-to-Work Credit.
8862		Information to Claim Earned Income Credit After Disallowance.
8863		Education Credits.
8864	X	Biodiesel Fuels Credit.
8865 SCH K–1	X	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	X	Transfer of Property to a Foreign Partnership.
8865 SCH P	X	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8865	X	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8866	X	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forcast Method.
8873	X	Extraterritorial Income Exclusion.
8874	X	New Markets Credit.
8878 SP		Autorizacion de firma para presentar por medio del IRS e-file—Solicitud de prorroga del plazo.
8878		IRS e-file Signature Authorization for Application for Extension of Time to File.
8879 SP		Autorizacion de firma para presentar por medio del IRS e-file.
8879		IRS e-file Signature Authorization.
8880		Credit for Qualified Retirement Savings Contributions.
8881	X	Credit for Small Employer Pension Plan Startup Costs.
8882	X	Credit for Employer-Provided Childcare Facilities and Services.
8885		Health Coverage Tax Credit.
8886	X	Reportable Transaction Disclosure Statement.
8889		Health Savings Accounts (HSAs).
8891		U.S. Information Return for Beneficiaries of Certain Cana.
8896	X	Low Sulfur Diesel Fuel Production Credit.
8898		Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	X	Qualified Railroad Track Maintenance Credit.
8901		Information on Qualifying Children Who Are Not Dependents (For Child Tax Credit Only).
8903	X	Domestic Production Activities Deduction.
9465 SP		Peticion para un Plan de Pagos a Plazos.
9465		Installment Agreement Request.
SS–4	X	Application for Employer Identification Number.
SS–8	X	Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	X	Forest Activities Schedules.
W–4 P		Withholding Certificate for Pension or Annuity Payments.
W–4 S		Request for Federal Income Tax Withholding From Sick Pay.
W–4 SP		Certificado de descuentos del(la) empleado(a) para la retencion.
W–4 V		Voluntary Withholding Request.
W–4		Employee's Withholding Allowance Certificate.
W–5 SP		Certificado del pago por adelantado del Credito por Ingreso del Trabajo.
W–5		Earned Income Credit Advance Payment Certificate.
W–7 A		Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP		Solicitud de Numero de Identicacion Personal del Contribuyente el Servicio de Impuestos Internos.
W–7		Application for IRS Individual Taxpayer Identification Number.
Notice 160920–05		Deduction for Energy Efficient Commercial Buildings.
8906		Distills Spirits Credit.
8908		Energy Efficient Home Credit.
8910		Alternative Motor Vehicle Credit.
8911		Alternative Fuel Vehicle Refueling Property Credit.
8914		Exemption Amount For Taxpayers Housing Individuals Displaced by Hurricane Katrina.
8915		Qualified Hurricane Retirement Plan Distribution and Repayments.
1040ES (NR)		U.S. Estimated Tax for Nonresident Alien Individuals.
2350 SP		Solicitud de Prórroga para Presentar la Declaración del Impuesto sobre el Ingreso de los Estados Unidos.
4868 SP		Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
5695		Residential Energy Credits.
8888		Direct Deposit of Refund to More Than One Account.
8907		Nonconventional Source Fuel Credit.
8913	X	Credit For Federal Telephone Excise Tax Paid.
8919		Uncollected Social Security and Medicare Tax on Wages.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–24152 Filed 12–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2553

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2553, Election by a Small Business Corporation.

DATES: Written comments should be received on or before February 11, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election by a Small Business Corporation.

OMB Number: 1545–0146.

Form Number: 2553.

Abstract: Form 2553 is filed by a qualifying corporation to elect to be an S Corporation as defined in Internal Revenue Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S Corporation and the corporation's income is taxed to the shareholders of the corporation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and Farms.

Estimated Number of Respondents: 500,000.

Estimated Time per Respondent: 17 hrs., 7 min.

Estimated Total Annual Burden Hours: 8,555,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–24107 Filed 12–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–Q

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–Q, Payments From Qualified Education Programs (Under Sections 529 and 530).

DATES: Written comments should be received on or before February 11, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Payments From Qualified Education Programs (Under Sections 529 and 530).

OMB Number: 1545–1760.

Form Number: 1099–Q.

Abstract: Form 1099–Q is used to report distributions from private and state qualified tuition programs as required under Internal Revenue Code sections 529 and 530.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 150,000.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 33,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 30, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–24108 Filed 12–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–45 and Revenue Procedure 2004–48

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–45, Late Election Relief for S Corporations, and Revenue Procedure 2004–48, Deemed Corporate Election for Late Electing S Corporations.

DATES: Written comments should be received on or before February 11, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedures should be directed to R. Joseph Durbala, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2003–45, Late Election Relief for S Corporations, and Revenue Procedure 2004–48, Deemed Corporate Election for Late Electing S Corporations.

OMB Number: 1545–1548.

Revenue Procedure Number: Revenue Procedure 2003–45 and Revenue Procedure 2004–48.

Abstract: Revenue Procedure 2003–45 provides a simplified method for taxpayers to request relief for late S corporation elections, Electing Small Business Trust (ESBT) elections, Qualified Subchapter S Subsidiary (QSub) elections. Generally, this revenue procedure provides that certain eligible entities may be granted relief for failing to file these elections in a timely manner if the request for relief is filed with 24 months of the due date of the election. Revenue Procedure 2004–48 provides a simplified method for taxpayers to request relief for a late S corporation election and a late corporate classification election which was intended to be effective on the same date that the S corporation election was intended to be effective.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 30, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–24109 Filed 12–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee January 2008 Public Meeting

Summary: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for January 15, 2008.

Date: January 15, 2008.

Time: Public meeting time: 9 a.m. to 12 p.m.

Location: United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review candidate designs for the Abraham Lincoln One-Cent Coin Redesign Program, candidate designs for the Congressional Gold Medal for Dr. Michael E. DeBakey, and other general business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: December 7, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–24169 Filed 12–12–07; 8:45 am]

BILLING CODE 4810–02–P

Federal Register

Thursday,
December 13, 2007

Part II

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 41

Federal Reserve System
12 CFR Part 222

Federal Deposit Insurance Corporation
12 CFR Part 334

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 571

National Credit Union Administration
12 CFR Part 717

Federal Trade Commission
16 CFR Part 660

Section 312 of the Fair and Accurate Credit Transactions Act; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket ID OCC–2007–0019]

RIN 1557–AC89

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Docket No. R–1300]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AC99

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[Docket No. OTS–2007–0022]

RIN 1550–AC01

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

FEDERAL TRADE COMMISSION

16 CFR Part 660

RIN 3084–AA94

Interagency Notice of Proposed Rulemaking: Procedures To Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); and Federal Trade Commission (FTC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, and FTC (Agencies) are publishing for comment proposed regulations and guidelines to implement the accuracy and integrity provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).[1] The proposed regulations and guidelines would implement the requirement that the Agencies issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. The Agencies also are publishing for comment proposed regulations to implement the direct dispute provisions in section 312. The proposed regulations would implement the requirement that the Agencies issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

[1] Pub. L. 108–159, 117 Stat. 1952 (Dec. 4, 2003).

DATES: Comments must be submitted by February 11, 2008.

ADDRESSES: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Commenters are also encouraged to use the title ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies'' to facilitate the organization and distribution of the comments. Comments submitted to one or more of the Agencies will be made available to all of the Agencies. Interested parties are invited to submit comments to:

OCC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov''*: Go to *http://www.regulations.gov*, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0019'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *E-mail: regs.comments@occ.treas.gov*.
- *Fax:* (202) 874–4448.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2007–0019'' in your comment. In general, OCC will enter all comments received into the docket and publish them on *Regulations.gov* without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, select the ''Search for All Documents (Open and Closed for Comment)'' option, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0019'' to view public comments for this notice of proposed rulemaking.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1300, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted,

unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by the RIN for this rulemaking, by any of the following methods:

• *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.

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

• *E-Mail: Comments@FDIC.gov.* Include the RIN number 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.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html*, including any personal information provided. Comments may be inspected and photocopied at the FDIC Public Information Center, Room E–1002, 3501 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) 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.

OTS: You may submit comments, identified by OTS–2007–0022, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click submit. Select Docket ID ''OTS–2007–0022'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2007–0022.

• *Fax:* (202) 906–6518.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2007–0022.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS–2007–0022'' to view public comments for this notice of proposed rulemaking.

• *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods (please send comments by one method only):

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

• *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Notice of Proposed Rulemaking Part 717, Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act'' in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

• *Hand Delivery/Courier:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration. Deliver to guard station in the lobby of 1775 Duke Street, Alexandria, VA 22314–3428, on business days between 8 a.m. and 5 p.m.

All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, VA 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FTC: Comments should refer to ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act, Project No. R611017,'' and may be submitted by any of the following methods. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[2]

• *E-mail: https://secure.commentworks.com/ftc-FACTAfurnishers.* To ensure that the Commission considers an electronic comment, you must file it on the Web-based form found at this Web link and follow the instructions on that form.

• *Federal eRulemaking Portal: http://www.regulations.gov.* You may visit this Web site to read this request for public comment and to file an electronic comment. The Commission will consider all comments that *regulations.gov* forwards to it.

• *Mail or Hand Delivery:* A comment filed in paper form should refer, both in the text and on the envelope, to the name and project number identified above, and should be mailed or delivered to the following address:

[2] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Federal Trade Commission/Office of the Secretary, Room 159–H (Annex C), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Paul Utterback, National Bank Examiner, Compliance Policy, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel, Amy E. Burke, Attorney, or Jelena McWilliams, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Anne B. Zorc, Senior Attorney, (202) 452–3876, or Kara L. Handzlik, Attorney, (202) 452–3852, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: David P. Lafleur, Policy Analyst, (202) 898–6569, or John Jackwood, Senior Policy Analyst, (202) 898–3991, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, (202) 898–7424, or Richard B. Foley, Counsel, (202) 898–3784, Legal Division; 550 17th St., NW., Washington, DC 20429.

OTS: Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906–6459; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, at 1700 G Street, NW., Washington, DC 20552.

NCUA: Linda Dent or Regina Metz, Attorneys, Office of General Counsel, phone (703) 518–6540 or fax (703) 518–6569, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

FTC: Clarke W. Brinckerhoff and Pavneet Singh, Attorneys, (202) 326–2252, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fair Credit Reporting Act (FCRA), which was enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.[3] In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA.[4] The FACT Act further amended the FCRA for various purposes, including to increase the accuracy of consumer reports.

Section 623 of the FCRA describes the responsibilities of persons that furnish information about consumers (furnishers) to consumer reporting agencies (CRAs).[5] Section 312 of the FACT Act amended section 623 by requiring the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines (referred to in this proposal as the accuracy and integrity regulations and guidelines). Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information provided by a furnisher to a CRA and contained in a consumer report based on a direct request from a consumer (referred to in this proposal as the direct dispute regulations). The Agencies are proposing to adopt accuracy and integrity regulations and guidelines and direct dispute regulations to satisfy the requirements of section 312.[6]

II. Statutory Requirements

Accuracy and Integrity Regulations and Guidelines

As added by section 312 of the FACT Act, section 623(e)(1)(A) of the FCRA requires the Agencies to establish and maintain guidelines for use by each furnisher ''regarding the accuracy and integrity of the information relating to consumers'' that the furnisher provides to CRAs. In developing the guidelines, section 623(e)(3) directs the Agencies to:

- Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to CRAs;
- Review the methods (including technological means) used to furnish information relating to consumers to CRAs;
- Determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to CRAs; and
- Examine the policies and processes employed by furnishers to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to CRAs.

The Agencies also are required to update the guidelines as often as necessary.

Section 623(e)(1)(B) of the FCRA requires the Agencies to prescribe regulations requiring furnishers to ''establish reasonable policies and procedures for implementing the guidelines'' established pursuant to section 623(e)(1)(A). Section 623(e)(2) of the FCRA provides that the Agencies must consult and coordinate with one another so that, to the extent possible, the regulations prescribed by each Agency are consistent and comparable with the regulations prescribed by each of the other Agencies.

Direct Disputes

As amended by section 312 of the FACT Act, section 623(a)(8) of the FCRA directs the Agencies jointly to prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request by the consumer. In prescribing the direct dispute regulations, section 623(a)(8) directs the Agencies to weigh the following specific factors:

- The benefits to consumers and the costs to furnishers and the credit reporting system;

[3] 15 U.S.C. 1681–1681x.

[4] Pub. L. 104–208, 110 Stat. 3009 (Sept. 20, 1996).

[5] Section 623 is codified at 15 U.S.C. 1681s–2.

[6] The FACT Act also directs the FTC to ''conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.'' *See* section 319 of the FACT Act. The FTC submitted its first interim report to Congress on this study on December 9, 2004, *http://www.ftc.gov/reports/facta/041209factarpt.pdf* (last visited Oct. 4, 2007). The FTC submitted its second interim report to Congress in December 2006, *http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006.pdf* (last visited Oct. 4, 2007).

- The impact on the overall accuracy and integrity of consumer reports of any direct dispute requirements;
- Whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any dispute; and
- The potential impact on the credit reporting process if credit repair organizations are able to circumvent the provisions in subparagraph G of section 623(a)(8), which generally states that the direct dispute rules shall not apply when credit repair organizations provide notices of dispute on behalf of consumers.

III. The Agencies' Consideration of the Statutory Accuracy and Integrity Criteria and Direct Dispute Factors

The Agencies' Advance Notice of Proposed Rulemaking

In order to obtain information pertaining to the criteria that Congress directed the Agencies to consider in developing the accuracy and integrity guidelines and the factors that Congress directed the Agencies to weigh in prescribing the direct dispute regulations, the Agencies issued an advance notice of proposed rulemaking (ANPR) in March 2006.[7] The ANPR contained detailed requests for comment on ten issues related to the statutory criteria governing the development of the accuracy and integrity guidelines, and on eight issues related to the statutory factors that the Agencies must weigh when promulgating the direct dispute regulations. The Agencies also specifically requested comment on how the issues presented by the ANPR might differ depending on the type of furnisher, the types of information furnished, the frequency with which a furnisher reports information about consumers to CRAs, or the type of CRA that receives the furnished information.

The Agencies received a total of 197 comments. Commenters included depository institutions, other financial services companies, trade associations, a CRA, a credit score service provider, a mortgage company, consumer groups, and individual consumers. Key issues identified and comments received on the accuracy and integrity criteria and on the direct dispute factors are summarized separately in the next two sections.

Comments Pertaining to Accuracy and Integrity Regulations and Guidelines

Burden of accuracy and integrity regulations and guidelines. A consistent theme among industry commenters on the ANPR was that the proposed guidelines and regulations should be sensitive to the voluntary nature of the reporting of information about consumers by furnishers to CRAs and not create undue burdens on furnishers that would discourage reporting. These commenters asserted that imposing burden on furnishers may result in furnishers reporting less information than they do presently or ceasing to report at all, thereby decreasing the effectiveness of the current credit reporting system for both consumers and industry.

Types of errors, omissions, or other problems that may impair the accuracy and integrity of furnished information. Many commenters detailed the types of errors that may impair the accuracy of information furnished to CRAs. Industry commenters, consumer groups, and individuals stated that some furnishers do not report consumers' positive payment histories, a practice that can lead to lower credit scores than consumers may merit. Similarly, commenters also noted that some furnishers do not report credit limits, which may likewise lead to lower credit scores. Consumer groups reported that sales of consumer accounts to collection agencies also result in accounts being ''re-aged,'' meaning that a debt receives a new origination date when the collection account is opened, resulting in the debt being included on a consumer's credit file longer than legally permissible. In addition, a number of industry commenters mentioned that data entry errors by furnishers and different data processing procedures by the CRAs can result in ''mixed files''—files that include information from two or more consumers. Commenters noted that furnishing inaccurate information can adversely affect consumer credit scores and result in higher costs of credit for some consumers and increased credit risk for lenders.

Patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of furnished information. Industry commenters and consumer groups stated that a number of furnishers do not use the industry standard format for reporting information about consumers to CRAs, which results in the reporting of inaccurate information. In addition, industry and consumer groups mentioned that sales of debt to collection agencies or to other creditors results in inaccurate information reported to the CRAs (*e.g.*, duplicative reporting of accounts and re-aged accounts). Consumer groups and a trade association noted problems with inaccurate bankruptcy information being reported—some furnishers continue to report a debt as not included in bankruptcy, fail to record a debt as discharged, or continue to show a balance owed after bankruptcy discharge. Several industry commenters stated that some furnishers do not provide data to CRAs in a timely manner, which may result in delinquent debtors appearing as current on their loans.

Business, economic, or other reasons for the patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of furnished information. A few consumer groups and trade associations indicated that some creditors omit good payment history or credit limit information in order to protect their proprietary underwriting systems and prevent competitors from soliciting business from their customers. Some commenters also asserted that collection agencies have little economic incentive to report updated or accurate information because they typically do not use consumer report information to determine credit risk.

Recommendations and descriptions of policies and procedures that a furnisher should implement and maintain to identify, prevent, or mitigate patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to a CRA. Some individual and industry commenters recommended that furnishers report all consumer account information to CRAs and not omit information. Consumer groups and some industry commenters recommended that furnishers should report using the Metro 2 format—a standard reporting format created by the credit reporting industry—or a similar standardized format. Some depository institutions and trade associations suggested that the accuracy and integrity guidelines should be flexible and take into consideration the diversity of furnishers with regard to size and business complexity.

Methods (including technological means) used to furnish information about consumers to CRAs. Industry commenters stated that most furnishers are reporting to the three nationwide CRAs electronically using the Metro 2 format, although some furnishers transmit information via magnetic tape, disks, or paper. Some trade associations commented that errors can be introduced into a consumer's credit file when a CRA translates the furnisher's raw data into the CRA's database.

[7] 71 FR 14,419 (March 22, 2006).

Maintenance and enforcement of policies and procedures to ensure the accuracy and integrity of information furnished to CRAs. Industry commenters stated that, in general, furnishers have policies and procedures in place to ensure the accuracy of information and perform internal audits to verify accuracy. Industry commenters also stated that furnishers have a business incentive to maintain and report accurate information in order to maintain good customer relations.

Methods (including any technological means) that a furnisher should use to ensure the accuracy and integrity of information about consumers furnished to CRAs. Industry commenters suggested that furnishers should use internal reports to verify the accuracy of information transmitted to the CRAs. Consumer groups recommended that furnishers take appropriate steps to ensure that they report bankruptcy discharge information accurately.

Descriptions of policies, procedures, and processes used by furnishers to conduct reinvestigations and to correct inaccurately furnished information and recommendations that furnishers should adopt. Industry commenters indicated that most furnishers use an electronic automated system (e-OSCAR) for receiving and transmitting consumer dispute information from and to the three nationwide CRAs. Although each furnisher has its own procedures for investigating disputes, furnishers generally review the information provided by the CRA and compare it to the information in the consumer's file at the furnisher. A few industry commenters stated that using the e-OSCAR system to conduct reinvestigations is adequate. One trade association stated that furnishers should establish better reinvestigation procedures and provide staff training for processing credit disputes.

Consumer groups commented that furnishers' reinvestigation procedures are inadequate in that they only verify that the reported information is consistent with the furnishers' records, not the underlying accuracy of such information. Consumer groups recommended that furnishers should perform in-depth investigations beyond verifying that information reported to CRAs matches furnishers' records, including contacting consumers to obtain additional information, if necessary. Consumer groups also noted that CRAs do not provide furnishers with documentation provided by consumers to support their claims.

Description of the policies and procedures of CRAs for ensuring the accuracy and integrity of furnished information and whether and to what extent those policies, procedures, or other requirements address particular problems that may affect information accuracy and integrity. A few industry commenters noted that CRAs have implemented policies to ensure the accuracy of information that they receive from furnishers. One industry commenter asserted that once CRAs incorporate data into their databases, furnishers do not know how CRAs actually apply the data to consumer credit files or whether the data is applied to the correct consumers.

Comments Pertaining to Direct Dispute Regulations

Circumstances under which a furnisher should be required to investigate a dispute. Industry commenters indicated that furnishers generally are voluntarily investigating disputes that are directly submitted to them using a process that is similar to the one furnishers use to investigate disputes that CRAs forward to the furnishers. Industry commenters, however, also stated that investigations of direct disputes should be required only in instances of fraud or identity theft that can be documented by the consumer, or where the consumer has provided a written detailed dispute to the furnisher. Other industry commenters believe that investigations of direct disputes should only be required if the consumer has already disputed the item with the CRA and received a response. Consumer groups favored a broad application of the direct dispute rule, noting that many furnishers already have an obligation to investigate other types of disputes for major product categories under other laws, such as the Truth in Lending Act, Real Estate Settlement Procedures Act, and Electronic Fund Transfer Act. Some individuals commented that furnishers should always be required to reinvestigate a consumer's account upon the consumer's request.

Benefits or costs to consumers that may result from a direct dispute right. Consumer groups commented that consumers would benefit from direct disputes because the dispute requirement would eliminate the problem of CRAs not forwarding disputes and supporting documentation to furnishers and would provide furnishers with necessary documentation to investigate errors or fraud. One individual noted that consumers would benefit by being able to deal with one entity, the furnisher, rather than the three nationwide CRAs. Some industry commenters noted that consumers would benefit from direct disputes in complex cases or where the consumer needs to provide the furnisher with supporting documentation.

Benefits to furnishers, consumer reporting agencies, or the credit reporting system that may result if furnishers are required to investigate direct disputes. Consumer groups stated that direct disputes will result in a more accurate credit reporting system and would afford industry the opportunity to standardize the dispute resolution process. A few industry commenters stated that direct disputes would yield faster dispute resolution for consumers. Some industry commenters mentioned that direct disputes may be beneficial for providing to furnishers additional documentation for complex disputes, noting that such information may not be forwarded by CRAs.

Costs to furnishers, consumer reporting agencies, or the credit reporting system of implementing a direct dispute requirement. Industry commenters believed that a direct dispute requirement would impose significant costs on furnishers resulting from an expected increase in the number of direct disputes. One depository institution reported that the costs of resolving a direct dispute are related to whether the disputed information contains derogatory information and the nature of the consumer's dispute. Some industry commenters noted that reviewing consumers' lengthy payment histories can be costly. One industry commenter noted that a direct dispute requirement would shift costs from CRAs to furnishers.

One consumer group commented that start-up costs should not be burdensome as many furnishers already have direct dispute responsibilities for their major products (such as credit cards). This commenter asserted that the cost for processing a direct dispute ranges from $25 to $200, and that this cost is exceeded by the harms to consumers who are adversely affected due to reporting errors.

Impact on the overall accuracy and integrity of consumer reports if furnishers are required to investigate direct disputes. Some industry commenters stated that they expect an adverse impact on overall accuracy and integrity of consumer reports as a result of an increase in duplicate disputes and costs, decreased efficiency in processing disputes, and the likelihood that some furnishers would stop reporting or report less information than they currently do.

Whether direct contact by the consumer with the furnisher would likely result in the most expeditious

resolution of a dispute. Industry commenters generally believed that direct contact by the consumer is most appropriate in instances of fraud, identity theft, or where detailed information is needed in order to resolve the consumer dispute. Some industry commenters also stated that direct contact by the consumer would not be appropriate where the error lies with the CRA or an aggregator rather than with the furnisher.

Potential impact on the credit reporting process if credit repair organizations are able to circumvent the FCRA's prohibition of their submission of direct disputes. Consumer groups and an individual commented that attorneys should be permitted to assist consumers with disputes and not be considered credit repair organizations. Industry commenters predicted an increase in costs resulting from a significant increase in the number of direct disputes that would be filed by credit repair organizations, which, these commenters contended, are often deliberately vague or overbroad.

Additional, specific comments are mentioned, as appropriate, in the section-by-section analysis.

The Agencies have carefully considered the comments received in response to the ANPR in developing the proposed accuracy and integrity regulations and guidelines and the proposed direct dispute regulations. The Agencies also reviewed a number of studies that have identified potential issues that may affect the accuracy of consumer report information. These studies indicate that consumer report accuracy may be affected by the presence of stale account information, the practice of furnishing only negative information about an account, inaccurate or incomplete public record data, inaccurate or incomplete collection account data, and unreported credit limits.[8]

IV. Section-by-Section Analysis[9]

The following describes the three components of this rulemaking: the proposed accuracy and integrity regulations, the proposed accuracy and integrity guidelines, and the proposed direct dispute regulations.

Proposed Accuracy and Integrity Regulations

Section _.40 Scope

Section _.40 sets forth the scope of each Agency's proposed regulations requiring furnishers to establish reasonable policies and procedures for implementing the accuracy and integrity guidelines. Each of the Agencies has tailored this section to describe those entities to which this subpart applies. The FDIC requests comment on whether it would be useful to include a cross-reference in its proposed regulation to the definition of ''subsidiary'' in the Federal Deposit Insurance Act.[10]

Section _.41 Definitions.

Two approaches to defining the terms ''accuracy'' and ''integrity.''

Section 623(e) of the FCRA requires the Agencies to establish and maintain guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to CRAs. The statute does not define the terms ''accuracy'' or ''integrity.''

Consumer group and industry commenters on the ANPR provided suggestions for defining the terms ''accuracy'' and ''integrity.'' Consumer groups proposed that the Agencies define the term ''accuracy'' to mean ''conformity to fact,'' rather than conformity to data records. They said that an accuracy standard should rely not only upon a furnisher's data records, but also upon original documents such as credit agreements. Some consumer groups also said that information should not be considered ''accurate'' if it is overly general, incomplete, out-of-date, or misleading. Consumer groups also proposed that the Agencies make clear that information lacks ''integrity'' if it is technically accurate, but misleads users of consumer reports because it does not include critical information.

Industry commenters, citing the legislative history of the FACT Act, suggested that the term ''integrity'' does not mean completeness, but rather, that the information a furnisher provides to a CRA is factually correct.

In the Agencies' view, neither the text nor the legislative history of the FACT Act resolves how the terms ''accuracy'' and ''integrity'' should be defined. Although the terms used in section 623(e) differ from terms used in other provisions of the FCRA,[11] the text of section 623(e) provides no direction to the Agencies about the meaning or significance of that difference.[12] The Agencies have reviewed the legislative history, and note that the Congressional Record includes post-enrollment statements regarding section 623(e) made by the Chairman of the House Financial Services Committee and by the Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs.[13] Those statements,

[8] *See* Robert B. Avery, Raphael W. Bostic, Paul S. Calem & Glenn B. Canner, *An Overview of Consumer Data and Credit Reporting*, Federal Reserve Bulletin, vol. 89, at 47–73 (Feb. 2003); Robert B. Avery, Paul S. Calem, Glenn B. Canner & Shannon C. Mok, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, vol. 90, at 297–322 (Summer 2004); Consumer Federation of America & National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers* (Dec. 17, 2002), *http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf* (last visited Oct. 4, 2007); Federal Trade Commission and Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process* (Aug. 2006).

[9] The OCC, Board, FDIC, OTS and NCUA would place the proposed regulations and guidelines implementing section 312 in the part of their regulations that implement the FCRA—12 CFR parts 41, 222, 334, 571, and 717, respectively. For ease of reference, the discussion in the Supplementary Information section uses the shared numerical suffix of each of these agency's regulations. The FTC also would place the proposed regulations and guidelines in the part of its regulations implementing the FCRA, specifically 16 CFR part 660. However, the FTC uses different numerical suffixes that equate to the numerical suffixes discussed in the Supplementary Information section as follows: Suffix .40 = FTC suffix .1, suffix .41 = FTC suffix .2, suffix .42 = FTC suffix .3, and suffix .43 = FTC suffix .4. In addition, Appendix E referenced in the Supplementary Information section is the FTC's Appendix A.

[10] *See* 12 U.S.C. 1813(w)(4).

[11] *See* FCRA section 623(b)(1), 15 U.S.C. 1681s–2(b)(1) (requiring entities that furnish information to CRAs to conduct investigations in response to complaints regarding the ''completeness or accuracy'' of furnished information); sections FCRA 623(a)(2)(A)–(B), 15 U.S.C. 1681s–2(a)(2)(A)–(B) (requiring furnishers to correct and update information that the furnisher determines is ''not complete or accurate'' and to refrain from refurnishing information that remains ''not complete or accurate'').

[12] Earlier versions of the legislation that became the FACT Act required the agencies to prescribe regulations and guidelines regarding the ''accuracy and completeness'' of information relating to consumers. This language also was contained in the bill passed by the Senate and referred to the Conference Committee. However, the bill reported by the Conference Committee used the phrase ''accuracy and integrity.'' *Compare* 149 Cong. Rec. S13990 (Nov. 5, 2003) (bill as passed by the Senate) *with* 149 Cong. Rec. H12198 (Nov. 21, 2003) (bill as reported by the Conference Committee).

[13] *See* 149 Cong. Rec. E2512, E2516 (Nov. 4, 2003) (extension of remarks of Chairman Michael Oxley, entered into the Congressional Record on Dec. 9, 2003) (''[a]ccuracy and integrity' was selected [by the Congress] as the relevant standard rather than 'accuracy and completeness' as used in Sections 313 and 319 [of the FACT Act], to focus on the quality of the information furnished rather than the completeness of the information furnished.''); 149 Cong. Rec. S15806–02 (Nov. 24, 2003) (statement of Ranking Member Paul Sarbanes) (''[A]ccuracy' relates to whether the information that is provided by data furnishers to credit reporting agencies is factually correct. The term 'integrity' relates to whether all relevant information that is used to assess credit risk and to grant credit is accurately provided. Integrity of information is not achieved when furnishers do not fully provide data that, by its absence, could have a positive or negative effect on a consumer's credit score, or on his or her ability to obtain credit under the most favorable terms for which he or she qualifies.'').

however, provide different views on the meaning of the terms.

In light of these considerations, the Agencies are proposing for comment two alternative approaches to defining the terms ''accuracy'' and ''integrity'' in the text of the regulations and guidelines. Although the definition of ''accuracy'' is the same under both alternatives, the two approaches differ in terms of both the substance of the definition of ''integrity'' and the placement of the definitions. Accordingly, the Agencies request comment on which definition of ''integrity'' should be adopted in the final rule, and on whether the definitions of ''accuracy'' and ''integrity'' should be placed in the regulations or in the guidelines.

A. Regulatory Definition Approach

Under the first approach, the Agencies would provide specific definitions for the terms ''accuracy'' and ''integrity'' in the regulations. This approach, labeled ''Regulatory Definition Approach,'' appears at §§ _.41(a) and _.41(b) in the text of the proposed regulations. Under proposed § _.41(a), the term ''accuracy'' means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance or other conduct with respect to the account or other relationship. This proposed definition of ''accuracy'' is intended to require that furnishers have reasonable procedures in place to ensure that the information they provide to CRAs is factually correct. The Agencies solicit comment on whether the definition of accuracy should specifically provide that accuracy includes updating information as necessary to ensure that information furnished is current.

Under proposed § _.41(b), the term ''integrity'' means that any information that a furnisher provides to a CRA about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Thus, the Regulatory Definition Approach provides that information furnished to a CRA may be technically ''accurate'' yet lack ''integrity'' because it presents a misleading picture of the consumer's creditworthiness by omitting critical information, such as a credit limit on a revolving credit account.[14]

Under the Regulatory Definition Approach—and as described in further detail in the section-by-section analysis of the guidelines—the Agencies would include in the guidelines six objectives that a furnisher's policies and procedures should be designed to achieve. The six objectives seek to ensure that: Information is furnished accurately; information is furnished with integrity; the furnisher conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; information is reported in a form and manner designed to minimize the likelihood that it will be erroneously reflected in the consumer's report; information furnished is substantiated by the furnisher's records; and the furnisher updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship. The first two of these objectives would reflect the regulatory definitions of ''accuracy'' and ''integrity.''

Thus, under the Regulatory Definition Approach, the guidelines would provide that a furnisher should have written policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer:

- Accurately identifies the appropriate consumer;
- Accurately reports the terms of those accounts or other relationships; and
- Accurately reports the consumer's performance and other conduct with respect to the account or other relationship.

Further, the guidelines would provide that a furnisher should have policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading users of consumer reports about the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Consistent with the FCRA, under which the furnishing of information about consumers is voluntary, the proposed definitions would apply only to information that the furnisher elects to report to CRAs. The Agencies are aware that some furnishers may be subject to separate obligations to report all available information about an account or other relationship.[15] These proposed definitions, however, are not intended to require furnishers to do so.

B. Guidelines Definition Approach

The second approach contained in the proposal, labeled the ''Guidelines Definition Approach,'' would define the terms ''accuracy'' and ''integrity'' in the guidelines—rather than in the regulations—with reference to the objectives that a furnisher's policies and procedures should be designed to accomplish.

Under the Guidelines Definition Approach, the Agencies have identified four objectives that pertain to the accuracy and integrity of information furnished and related matters. Definitions for the terms ''accuracy'' and ''integrity'' would be incorporated into the first two of these objectives. Thus, the guidelines would provide that a furnisher should have written policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. The guidelines would define ''accuracy'' to mean that any information that a furnisher provides to a CRA about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance or other conduct with

[14] ''A key factor that credit evaluators consider when they assess the creditworthiness of an individual is credit utilization. If a creditor fails to report a credit limit for an account, credit evaluators must either ignore utilization or use a substitute measure such as the highest-balance level—that is, the largest amount ever owed on the account. Substituting the highest balance level for the credit limit generally results in a higher estimate of credit utilization because the highest-balance amount is typically lower than the credit limit: the higher estimate leads, in turn, to a higher perceived level of credit risk for affected consumers.'' Robert B. Avery, Paul S. Calem, Glenn B. Canner, *Credit Report Accuracy and Access to Credit; Federal Reserve Bulletin*, Summer 2004, p. 306.

[15] Furnishers that report information about consumers to CRAs related to mortgage loans may be required by Freddie Mac, Fannie Mae, and the Federal Housing Administration to report full-file information. *See* Fannie Mae Servicing Guide, Part I, Section 304.09 and Part VII, Section 107; Freddie Mac Service Guide, Section 55.4: Reports to credit repositories; and the Federal Housing Administration Servicing Handbook, Section 4330.1(c) (Rev-5) (incorporating by reference the Fannie Mae Servicing Guide). Further, the Department of Housing and Urban Development has defined ''Mortgages contrary to good lending practices'' to include a mortgage or a group or category of mortgages entered into by a lender and purchased by Fannie Mae or Freddie Mac where it can be shown that a lender engaged in a practice of failing to report monthly on borrowers' repayment history to credit repositories on the status of each loan purchased by Fannie Mae or Freddie Mac that a lender is servicing. 24 CFR 81.2(b).

respect to the account or other relationship. This is the same definition of ''accuracy'' used in the Regulatory Definition Approach.

Additionally, the guidelines would provide that a furnisher's policies and procedures should ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. The guidelines would define ''integrity'' to mean that any information that a furnisher provides to a CRA about an account or other relationship with the consumer: (1) Is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report; and (2) should be substantiated by the furnisher's own records. In addition to being placed in a different location, this definition is substantively different from that used in the Regulatory Definition Approach.

Under the Guidelines Definition Approach, the definition of ''integrity'' does not address the omission of any term the absence of which could contribute to an incorrect evaluation by a user of a consumer's creditworthiness. Instead, the proposed definition of ''integrity'' addresses two potential issues with furnished information. First, accurate information may be attributed to the wrong consumer or the wrong account, or may be associated with an erroneous date. Second, if the accuracy of the furnished information is disputed, the furnisher should be able to substantiate, or verify, the information through its own records. The Regulatory Definition Approach also includes these two concepts in the guidelines as objectives that a furnisher's policies and procedures should be designed to achieve. The Guidelines Definition Approach, like the Regulatory Definition Approach, also includes as objectives: Ensuring that the furnisher conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; and ensuring that the furnisher updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship.

As noted above, the Agencies invite comment on these alternative definitions of ''integrity,'' and on whether the definitions of ''accuracy'' and ''integrity'' should be placed in the regulatory text or in the guidelines.

Furnisher

Proposed § _.41(c) would define the term ''furnisher'' to mean an entity other than an individual consumer that furnishes information relating to consumers to one or more CRAs. An entity is not a furnisher under the proposed definition when it provides information to a CRA solely to obtain a consumer report under sections 604(a) and (f) of the FCRA, which enumerate the circumstances under which a CRA may provide a consumer report and prohibit persons from obtaining or using consumer reports for impermissible purposes. Users of consumer reports may provide information about consumers to CRAs in order to obtain such reports, but they do not do so for the purpose of having such information included in consumer reports. Although the user's request for the report may be reflected in the consumer report as an inquiry, the Agencies do not believe it would be appropriate to subject such furnishing of information to the regulations and guidelines proposed here. In addition, by defining the term ''furnisher'' in terms of an entity other than an individual consumer, the proposal makes clear that consumers are not furnishers, even if they self-report information about themselves to a CRA.

Identity Theft

Proposed § _.41(d) provides that the term ''identity theft'' has the same meaning as in the FTC's regulations at 16 CFR 603.2(a). Section 603.2(a), which was adopted pursuant to section 111 of the FACT Act,[16] defines the term ''identity theft'' to mean ''a fraud committed or attempted using the identifying information of another person without authority.'' This definition also is used in the interagency regulations implementing section 114 of the FACT Act (Red Flags).

Direct Dispute

Proposed § _.41(e) defines ''direct dispute'' to mean a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer. Although the definition of ''direct dispute'' uses the term accuracy, the proposed Regulatory Definition Approach provides a definition of accuracy for purposes of the definition of ''direct dispute,'' but the Guidelines Definition Approach does not.

The Agencies solicit comment on whether the definition of ''accuracy'' should be made applicable to direct disputes, if the Guidelines Definition Approach is adopted. The Agencies also solicit comment on whether the proposed definition of ''accuracy'' is appropriate for the direct dispute provision.[17]

Section _.42 Reasonable Policies and Procedures Concerning the Accuracy and Integrity of Furnished Information

Paragraph (a) of proposed § _.42 would require each furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information about consumers that it furnishes to a CRA. The policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities.

The requirement that furnishers' policies and procedures be written facilitates effective implementation and enables the Agencies to assess furnishers' compliance with the rules. The Agencies do not believe that the requirement for written policies and procedures will be unduly burdensome, particularly since, under the guidelines, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. As noted previously, industry commenters responding to the ANPR noted that, in general, furnishers have policies and procedures in place to ensure the accuracy of information furnished to CRAs. The Agencies invite comment on any burden and effects on furnishers, particularly small furnishers, regarding the requirement that the policies and procedures be written.

The Agencies recognize that there is substantial diversity among furnishers with respect to their structure, operations, and the types of business they conduct, such that a ''one-size-fit-all'' approach to the implementation of the guidelines is inappropriate. The requirement that the furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities permits furnishers to tailor their policies and procedures to their business activities.

[16] Section 111 provides for a definition of the term ''identity theft,'' and authorizes the FTC to refine that definition. *See* section 603(q)(3) of the FCRA, 15 U.S.C. 1681a(q)(3).

[17] The Agencies note that section 623(a)(8) only requires a furnisher to handle direct disputes about ''accuracy.'' In contrast, section 611(a) requires a CRA to handle disputes about ''completeness or accuracy'' and section 623(b) requires furnishers to reinvestigate disputes about ''completeness or accuracy'' if the disputes come through a CRA. The Agencies particularly request comment on whether the definition of ''accuracy'' needs to be clarified in order to more clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct disputes rule.

The Agencies expect, for example, that the policies and procedures for a small retail entity would differ from those of a multi-billion dollar financial services company.

Proposed § _.42(b) requires each furnisher to consider the accuracy and integrity guidelines in developing its policies and procedures and to incorporate those guidelines that are appropriate. Furnishers should consider the guidelines in the context of the nature, size, complexity, and scope of their activities and incorporate the guidelines that are appropriate to ensure the accuracy and integrity of the information about consumers that they provide to CRAs.

Some of the commenters on the ANPR specifically suggested that the Agencies require furnishers to review or audit their furnishing policies and procedures in order to ensure that the information about consumers continues to be furnished accurately and with integrity. Proposed § _.42(c) incorporates these commenters' suggestions and would require each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

Proposed Accuracy and Integrity Guidelines

The accuracy and integrity guidelines appear as Appendix E to the appropriate part of each Agency's regulations. In the introductory language to the guidelines, the Agencies encourage voluntary furnishing of information about consumers to CRAs. This reflects the recognition that the voluntary system of consumer reporting produces substantial benefits for consumers, users of consumer reports, and the economy as a whole. The introduction also reminds furnishers that § _.42 of the proposed regulations would require each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information about consumers it furnishes to CRAs and to consider the guidelines in developing those policies and procedures.

Section I—Nature, Scope, and Objectives of Policies and Procedures

The Nature and Scope section of the guidelines references the requirement, at proposed § _.42(a), that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities and provides the following examples of aspects of a furnisher's business activities that its policies and procedures should reflect: The types of business activities in which the furnisher engages; the nature and frequency of the information about consumers the furnisher provides to CRAs; and the technology used by the furnisher to provide information to CRAs.

The Objectives section of the guidelines provides that a furnisher should have written policies and procedures reasonably designed to accomplish the specified objectives. As described earlier in the discussion of the terms ''accuracy'' and ''integrity,'' the wording of some of the objectives set out in the guidelines is related to the alternative approaches to construing the term ''integrity'' that the Agencies are proposing in the text.

In connection with the Regulatory Definition Approach, the first two objectives of the guidelines would provide that a furnisher should have written policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer accurately identifies the appropriate consumer; accurately reports the terms of those accounts or other relationships; accurately reports the consumer's performance and other conduct with respect to the account or other relationship; and designed to ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Under the Guidelines Definition Approach, definitions of ''accuracy'' and ''integrity'' would be incorporated into the first two objectives. Thus, the guidelines would provide that a furnisher should have written policies and procedures reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. The guidelines would define ''accuracy'' to mean that with respect to any information that a furnisher provides about an account or other relationship with the consumer to a CRA reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

Additionally, under the Guidelines Definition Approach, the guidelines would provide that a furnisher's written policies and procedures should be reasonably designed to ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. The guidelines would define ''integrity'' to mean, that any information that a furnisher provides to a CRA about an account or other relationship with the consumer is:

- Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is: (A) Reported with appropriate identifying information about the consumer to which it pertains; (B) reported in a standardized and clearly understandable form and manner; and (C) reported with a date specifying the time period to which the information pertains; and
- Substantiated by the furnisher's own records.

As indicated in the discussion of the proposed accuracy and integrity regulations, the Agencies invite comment on the alternative approaches to defining the term ''integrity'' and the appropriate placement of the definitions. When responding to these issues raised by the Agencies, commenters may wish to address, among other relevant factors, how the approaches would impact the quality of information in consumer reports, the burdens on furnishers, and the relative benefits to consumers, the credit reporting system, and users of consumer reports.

The third proposed objective under both approaches states that a furnisher's policies and procedures should ensure that the furnisher conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations. This objective addresses concerns raised by commenters that some furnishers perform perfunctory investigations of consumer disputes in cases where a proper investigation would require reviewing information beyond the account status listed in the furnisher's electronic records, and that some furnishers do not update their own records when errors are discovered, resulting in incorrect information being reported again to the CRAs.

The fourth proposed objective under both approaches states that a furnisher should have written policies and procedures reasonably designed to ensure that the furnisher updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including: (a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third

party; and (b) any cure of the consumer's failure to abide by the terms of the account or other relationship.

The fifth proposed objective under the Regulatory Definition Approach states that the information a furnisher furnishes about accounts or other relationships with a consumer is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to which it pertains, in a standardized and clearly understandable form and manner, with a date specifying the time period to which the information pertains.

The sixth proposed objective under the Regulatory Definition Approach states that the information a furnisher furnishes about accounts or other relationships with a furnisher should be substantiated by the furnisher's own records.

Section II—Accuracy and Integrity Duties of Furnishers Under the FCRA

This section reminds furnishers of their statutory duties that relate to the accuracy and integrity of the information about consumers they provide to CRAs. This section states that a furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA and lists certain of those requirements, including the duty to investigate direct disputes as required by proposed § _.43 and section 623(a)(8) of the FCRA. This section also lists requirements such as the duty to provide to CRAs corrections or additional information necessary to make furnished information complete and accurate under the circumstances specified under section 623(a)(2) of the FCRA.

Section III—Establishing and Implementing Policies and Procedures

This section identifies three steps that furnishers should take when establishing accuracy and integrity policies and procedures. First, a furnisher should identify its practices or activities that can compromise the accuracy and integrity of information about consumers furnished to CRAs. Methods appropriate for this purpose include:

- Reviewing the furnisher's existing practices and activities;
- Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to CRAs and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of such information about consumers; and
- Obtaining feedback from CRAs, consumers, the furnisher's staff, or other appropriate parties.

Second, a furnisher should evaluate the effectiveness of its existing policies and procedures regarding the accuracy and integrity of information about consumers furnished to CRAs and consider whether additions or modifications to the policies and procedures are necessary. As is specifically mentioned in the introduction to the guidelines, a furnisher may incorporate in its accuracy and integrity policies and procedures any of its existing policies and procedures that are relevant and appropriate.

Third, a furnisher should evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information about consumers to CRAs and determine whether changes to those methods are appropriate to enhance the accuracy and integrity of that information.

Section IV—Specific Components of Policies and Procedures

This section serves to address specific problems raised by commenters on the ANPR, studies regarding the consumer reporting system, and other information gathered by the Agencies in the course of developing this proposal. The proposed guidelines detail specific components that should be addressed in a furnisher's policies and procedures. These include:

- Establishing and implementing a system for furnishing information about consumers to CRAs that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.
- Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to CRAs.
- Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that may be subject to a direct dispute. Thus, a furnisher's policies and procedures should incorporate any applicable recordkeeping requirements such as those contained in regulations implementing the Truth in Lending Act and the Equal Credit Opportunity Act,[18] or agency-specific requirements.[19] The Agencies note that section 611(a)(5) of the FCRA contains no time limit on the requirement that if a CRA reinvestigates a consumer dispute, it must modify or delete items that cannot be verified. The Agencies seek comment on whether a specific time period for recordkeeping should be incorporated in the final regulations.
- Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to CRAs, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to CRAs.
- Training staff that participates in activities related to the furnishing of information about consumers to CRAs to implement the policies and procedures.
- Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to CRAs to ensure compliance with the policies and procedures.
- Furnishing information about consumers to CRAs following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts, in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.
- Attempting to obtain the information listed in § _.43(d) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.
- Ensuring that deletions, updates, and corrections furnished to CRAs are reflected in business systems to avoid furnishing erroneous information.
- Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.
- Ensuring that technological and other means of communication with CRAs are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other

[18] *See* 12 CFR 226.25(a) and 12 CFR 202.11(b).

[19] *See, e.g.*, 12 CFR 561.2 (savings associations must retain accurate and complete records of all business transactions) and OTS Examination Handbook § 310 (savings associations should retain original business transaction records until the savings association has two regular examinations and has resolved any supervisory matters raised in the examinations).

occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

• Providing CRAs with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the CRA properly to identify the consumer.

• Conducting a periodic evaluation of its own practices, CRA practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to CRAs.

Proposed Regulations Concerning Direct Disputes

The third component of this notice of proposed rulemaking comprises the Agencies' proposed regulations implementing section 623(a)(8) of the FCRA, which directs the Agencies jointly to prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute concerning the accuracy of information about the consumer contained in a consumer report,[20] based on a direct request by the consumer. The statute sets forth procedural and other requirements applicable to any such reinvestigations.

We note that a number of industry commenters on the ANPR indicated that they are already voluntarily investigating direct disputes as a matter of good customer relations and sound business practices. The Agencies encourage furnishers to continue voluntary investigations of consumer disputes as one way to enhance the accuracy and integrity of the information about consumers they provide to CRAs.[21]

Section _.43(a) General Rule

The proposed general rule would require a furnisher to investigate a direct dispute if it relates to:

• The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

• The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;

• The consumer's performance or other conduct concerning a credit account or other debt with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

• Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living attributed to the furnisher on the consumer report.

The proposed rule is designed to permit direct disputes in virtually all circumstances involving disputes with respect to the types of information typically provided by the furnisher to a CRA, while excepting out certain types of information from the direct dispute process. The Agencies are proposing this approach in light of the considerations set forth in the statute to be weighed by the Agencies, including the benefits to consumers, the impact on the overall accuracy and integrity of consumer reports, and whether direct disputes would lead to the most expeditious resolutions of consumer disputes. The exceptions in the proposed rule relate to information where the disputes are more appropriately directed to the CRA, such as information derived from public records, which may be obtained directly from public sources,[22] and information about requests for consumer reports (''inquiries''). The Agencies specifically request comment on whether this approach appropriately weighs all of the relevant considerations.

In developing the proposed rule, the Agencies considered more targeted approaches based, for example, on commenters' suggestions that fraud and identity theft should be the only circumstances when a furnisher must investigate a direct dispute. The Agencies also considered other commenters' suggestions about when investigations of a direct dispute would be appropriate, such as for disputing account ownership and complex issues requiring analysis of supporting documentation. The Agencies are not proposing these approaches, however, as these approaches would likely present at least one disadvantage, namely, that it would be difficult for consumers and furnishers to know whether there is a direct dispute right in any particular circumstance.

In addition, the Agencies considered another commenter's suggestion to require investigation of direct disputes only where the consumer first raises the dispute with a CRA, but that process does not resolve the matter to the consumer's satisfaction. The Agencies are not proposing such an approach, however, because it could impose unnecessary barriers and delays for consumers wishing to avoid the CRA dispute process and bring disputes immediately to the furnisher.[23]

The Agencies believe that the approach adopted by the proposed rule more closely comports with consumer expectations that they be able to submit a dispute directly to the furnisher (with certain exceptions) when the issue in dispute relates to information for which the furnisher is responsible. The Agencies request comment on whether a more targeted approach would represent a more appropriate balancing of relevant policy considerations.

The Agencies also specifically invite comment on how direct dispute requirements would affect furnishers to smaller and specialty CRAs, such as CRAs that report medical information,

[20] For purposes of the proposed § _.43(c) and (d) of the direct disputes provision, a ''consumer report'' means a disclosure a CRA provides to a consumer as referenced in section 609(a) of the FCRA. CRAs may provide such disclosures in a different format than a consumer report they provide to a third party and refer to them as ''file disclosures.''

[21] The Agencies note that many entities, including depository institutions and their affiliates, also investigate disputes about information they furnish to CRAs that consumers raise through the consumer complaint processes established by their respective supervisory agencies. *See generally* FRB, ''How to File a Consumer Complaint Against a Bank,'' *http://www.federalreserveconsumerhelp.gov* (last visited October 26, 2007); FDIC, ''Consumer Affairs Brochure: Fostering Consumer Confidence in Banking, How to file a Written Complaint'' (October 2005), *http://www.fdic.gov/consumers/questions/consumer/complaint.html* (last visited November 1, 2007); OTS, ''How to Resolve a Consumer Complaint'' (February 2007), *http://www.ots.treas.gov/docs/4/480924.pdf* (last visited October 24, 2007); and OCC, ''Assistance for Customers of National Banks'' (April 2005), *http://www.occ.gov/customer.pdf* (last visited October 24, 2007).

[22] The public records exception applies only to information ''derived'' by the CRA from public records. It would not exempt a consumer's dispute of the accuracy of a furnisher's reference to a particular account being included in bankruptcy, for example.

[23] The Agencies note further that section 623(a)(8)(F) states that the obligation to reinvestigate direct disputes shall not apply if the dispute is ''frivolous or irrelevant'' because the consumer submitted a dispute that is substantially the same as a dispute previously submitted to a furnisher or through a CRA. The Agencies note that under the proposed rule, a direct dispute is not substantially the same if a consumer's dispute includes information listed in § _.43(d) that had not previously been provided to the furnisher.

check writing history, apartment rental history, or insurance claim filings.

Section _.43(b) Exceptions

A consumer report may include identifying information about a consumer (*e.g.*, names, addresses), trade line information (*e.g.*, name of creditor, payment history, loan amount), past and present employer information, and public record information (*e.g.*, information received from courts or other governmental authorities that are related to bankruptcies, judgments, or liens). Any given furnisher is the source of some, but not all, of the information included on a consumer report. A furnisher should only be responsible for investigating disputes about information regarding an account or other relationship between the furnisher and the consumer. Accordingly, the proposal requires a furnisher to investigate direct disputes only with respect to the types of information that it typically provides to CRAs. In most cases, the information subject to direct dispute will be part of a furnisher's trade line entry or entries on a consumer report.

Proposed § _.43(b) excepts from the investigation requirement any direct dispute that relates to:

- The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in § _.43(a)(1)),[24] such as name(s), date of birth, Social Security number, telephone number(s), or address(es);
- The identity of past or present employers; [25]
- Inquiries or requests for a consumer report;
- Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher having a relationship with the consumer); or
- Information related to fraud alerts or active duty alerts.

Proposed § _.43(b) also excepts from the investigation requirement any direct dispute if the notice of dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization as defined in 15 U.S.C. 1679a(3),[26] or an entity that would be a credit repair organization but for 15 U.S.C. 1679a(3)(B)(i), which excludes tax-exempt section 501(c)(3) organizations.

Section _.43(c) Direct Dispute Address

As added by section 312 of the FACT Act, section 623(a)(8)(D) of the FCRA requires a consumer to provide a direct dispute notice ''at the address specified'' by the furnisher. The statute and legislative history provide no guidance about how this address is to be specified by furnishers and effectively communicated to consumers. The Agencies believe that, in order for the direct dispute right to be implemented and to operate as Congress intended, it is necessary to clarify how a furnisher's direct dispute address is to be specified and communicated to consumers.

Proposed § _.43(c) would require a furnisher to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

- The address of the furnisher provided by a furnisher and set forth on a consumer report relating to the consumer (*i.e.*, the disclosure under section 609(a) of the FCRA);
- An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or
- Any business address of the furnisher, if the furnisher has not so specified and provided an address for submitting direct disputes.

Thus, a consumer would always be able to submit a direct dispute to the appropriate address appearing on the consumer report. The consumer would also be able to submit a direct dispute to any other business address of the furnisher unless the furnisher has separately specified an address to the consumer in accordance with the regulation. A furnisher choosing to specify an address must do so in a manner that is both reasonably understandable and designed to call the consumer's attention to the fact that the address is the one to use for submitting direct disputes about the accuracy of information in a consumer report. The Agencies note that a furnisher that specifies such an address for this purpose will not be deemed to have specified an address for purposes of section 623(a)(1)(B) of the FCRA, relating to the general duty to provide accurate information to the CRAs.

The Agencies believe that it will benefit consumers and be operationally feasible to allow consumers to submit a dispute notice to the address of the furnisher specified on the consumer report. The Agencies understand that in a large majority of cases, the consumer report includes an address supplied by the furnisher and the furnisher can control such address.[27] In addition, the Agencies believe that allowing consumers to submit dispute notices to the address of the furnisher set forth on the consumer report will increase the likelihood that the consumers will know where to send that dispute (because that address will be seen by consumers contemporaneous in time and location with the disputed information) and will encourage consumers to obtain and review their consumer reports prior to submitting a dispute to a furnisher. A furnisher will not be in violation of this provision for failure to investigate a dispute submitted to the address set forth on the consumer report if that address is incorrect due to an error by the CRA and does not reflect any business address of the furnisher.

[24] A direct dispute that relates both to identifying information and a consumer's liability for a credit account or other debt with the furnisher, such as in cases of identity theft, must be investigated by a furnisher pursuant to § _.43(a)(1).

[25] For this category of information concerning the identity of past or present employers, the Agencies believe that direct contact by the consumer would be unlikely to result in the most expeditious resolution of an employer identity-related dispute. For example, consumer reports sometimes contain certain ''employment history'' information, which is typically obtained from sources other than employers (such as credit applications). In those cases, an identified employer would be unable to correct disputed information because it was provided by another source.

[26] Under this provision of the Credit Repair Organizations Act, the term ''credit repair organization''—

(A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—

(i) improving any consumer's credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

[27] Allowing consumers to submit dispute notices to the address of the furnisher set forth on the consumer report is consistent with existing Federal and some state laws because these laws already impose related obligations. Section 611(a)(6)(B)(iii) of the FCRA requires the CRA to provide, upon the consumer's request, the business name and address, and phone number if reasonably available, of any furnisher the CRA contacts in connection with information reinvestigated in response to a consumer complaint filed with the CRA. California law requires that upon request of the consumer, the CRA must provide the consumer with the ''names, addresses and, if provided by the sources of information, the telephone numbers identified *for* customer service for the sources of information.'' Cal. Civil Code § 1785.10(c). It is the Agencies' understanding that CRAs commonly include the furnisher's business name, address, and telephone number on the consumer report (where the furnisher provides it) so that consumers will automatically learn how to contact the furnisher about a dispute upon receipt of the consumer report without the need to request that information from the CRA.

The Agencies request comment on whether there are circumstances under which it would not be appropriate for a consumer to submit a dispute notice to the address of the furnisher set forth on the consumer report. The Agencies also invite comment on whether § _.43(c)(3) should exclude certain types of business addresses, such as a business address that is used for reasons other than for receiving correspondence from consumers or business locations where business is not conducted with consumers.

In addition, the Agencies request comment on whether § _.43(c)(2) should be amended to permit furnishers to notify consumers orally of the address for direct disputes. The agencies also request comment on whether and, if so, how an oral notice can be provided clearly and conspicuously.

Section _.43(d) Direct Dispute Notice Contents

Section 623(a)(8)(D) of the FCRA provides that a furnisher is not required to investigate a dispute unless a consumer provides the furnisher with a notice of dispute that:

- Identifies the specific information that is being disputed;
- Explains the basis for the dispute; and
- Includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

Proposed § _.43(d) would implement 623(a)(8)(D) by requiring that a notice of dispute include:

- The name, address, and telephone number of the consumer;
- Sufficient information to identify the account or other relationship that is in dispute, such as an account number;
- The specific information that the consumer is disputing and an explanation of the basis for the dispute; and
- All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute, such as a copy of the consumer report that contains the allegedly inaccurate information, a police report, a fraud or identity theft affidavit, a court order, or account statements.

Section 609(c)(2) of the FCRA requires the FTC to promulgate, and CRAs to disseminate with their provision of consumer reports to consumers, a ''General Summary of Consumer Rights.'' The FTC intends to update the existing General Summary of Consumer Rights to reflect additional rights provided to consumers by the FACT Act and the implementing rules, including consumers' direct dispute rights. The Agencies invite comment on what additional mechanisms should be required, if any, for informing consumers of their direct dispute rights.

Section _.43(e) Frivolous or Irrelevant Disputes

Section 623(a)(8)(F) of the FCRA provides that a furnisher is not required to investigate a dispute that a furnisher reasonably determines to be frivolous or irrelevant. That statutory provision states that a frivolous or irrelevant dispute includes situations involving:

- The failure of a consumer to provide sufficient information to investigate the disputed information; or
- The submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a CRA under section 623(b) of the FCRA, with respect to which the furnisher already completed its investigation duties.

Proposed § _.43(e) implements these statutory provisions, including these two types of frivolous or irrelevant disputes. Under the statute, when a furnisher determines that a dispute is frivolous or irrelevant, it must send a notice of that determination (including the reasons for the determination) to the consumer. In cases involving insufficient information, furnishers should make a good faith attempt to obtain sufficient information from a consumer before sending such a notice to the consumer as noted in section IV(I) of the guidelines.

The Agencies note that the language of section 623(a)(8)(F) specifies two situations, but does not limit frivolous or irrelevant disputes solely to those two situations. The Agencies are proposing to specify a third situation involving a frivolous or irrelevant dispute. Under proposed § _.43(e)(1)(iii), a dispute would be frivolous or irrelevant if the furnisher is not otherwise required to investigate the direct dispute under the proposed regulation.[28] This provision is intended to provide clarity for furnishers regarding their duty to investigate direct disputes and their responsibilities when no such investigation is required. This provision also would ensure that consumers in this situation receive notice from the furnisher that their dispute was deemed frivolous or irrelevant, as required by the FCRA in sections 623(a)(8)(F)(ii) and (iii).[29]

Section _.43(e)(2) would incorporate the FCRA's section 623(a)(8)(F)(ii) requirement that a furnisher must notify a consumer of its determination that a dispute is frivolous or irrelevant not later than five business days after making the determination. Section _.43(e)(3) likewise would incorporate from section 623(a)(8)(F)(iii) of the FCRA the content requirements for a notice of determination that a dispute is frivolous or irrelevant. Such notices are to include the reasons for the determination and identify any information required to investigate the disputed information.

V. Request for Comment

The Agencies invite comment on all aspects of the proposed accuracy and integrity regulations and guidelines and of the proposed direct dispute regulations, on the factors to be considered by the Agencies under sections 623(a)(8) and 623(e) of the FCRA, and on the specific issues on which comment is solicited elsewhere in the **SUPPLEMENTARY INFORMATION**, including the following:

- The alternative definitions of ''integrity'' and the alternative placement of the definitions of ''accuracy'' and ''integrity'' in regulatory text or in the guidelines;
- Whether the definition of accuracy should specifically provide that ''accuracy'' includes updating information as necessary to ensure that information furnished is current;
- Whether the definition of ''accuracy'' should be made applicable to direct disputes if the Guidelines Definition Approach is adopted;
- Whether the proposed definition of ''accuracy'' is appropriate for the direct dispute rule, and, in particular, whether the definition of ''accuracy'' needs to be clarified in order to more clearly delineate those disputes that, while subject to the CRA dispute process, would not be subject to the direct dispute rule;
- Whether the Agencies' approach to direct disputes appropriately reflects the relevant considerations, or whether a more targeted approach would represent a more appropriate balancing of relevant policy considerations;
- Whether proposed § _.43(c)(2) should be amended to permit furnishers to notify consumers orally of the

[28] For example, under proposed § _.43(b)(2), a furnisher would not be required to investigate a direct dispute that is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization. Thus, such a dispute would be frivolous or irrelevant under proposed § _.43(e)(1)(iii).

[29] 15 U.S.C. 1681s–2(a)(8)(F)(ii) and (iii). Those provisions of the FCRA generally set out a furnisher's responsibilities regarding the notice it must provide to a consumer once it determines that a dispute is frivolous or irrelevant.

address for direct disputes and, if so, how an oral notice can be provided clearly and conspicuously;

• What additional mechanisms should be required, if any, for informing consumers of their direct dispute rights;

• How direct dispute requirements would affect furnishers to smaller and specialty CRAs, such as CRAs that report medical information, check writing history, apartment rental history, or insurance claim filings;

• Whether the guidelines should incorporate a specific time period for retaining records in order to provide for meaningful investigations of direct disputes, and, if so, what record retention time period would be appropriate; and

• Whether § _.42(c)(2) should exclude certain types of business addresses, such as a business address that is used for reasons other than for receiving correspondence from consumers or business locations where business is not conducted with consumers.

In addition, the Agencies specifically invite comment as follows:

The Agencies invite comment from individuals and public interest and consumer advocacy organizations on the effect this proposal may have on consumers and the credit reporting industry.

The Agencies recognize that small institutions operate with more limited resources than larger institutions. Thus, the Agencies specifically request comment on the impact of this proposal on small institutions' current resources, including personnel resources, and whether the goals of the proposal could be achieved for small institutions through an alternative approach.

The Agencies invite comment from businesses other than depository institutions that furnish information about consumers to CRAs, including non-depository institution mortgage lenders, debt collectors, consumer finance companies, and retailers. The Agencies also invite comment from persons who furnish information about consumers to specialized types of CRAs, such as CRAs that collect information for the purpose of making decisions regarding insurance, employment or tenant screening, or check verification. Similarly, the Agencies request comments from CRAs, including nontraditional CRAs that may only provide information to a limited class of businesses (*e.g.*, medical information providers and tenant screening services).

The Agencies also invite comment on ways to minimize the burden of the final rule.

VI. Regulatory Analysis

A. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (''PRA''), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted by the OCC, FDIC, OTS, NCUA, and FTC to OMB for review and approval under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR Part 1320). The review and authorization information for the Board is provided later in this section along with the Board's burden estimates. The proposed rule contains requirements subject to the PRA. The requirements are found in 12 CFR §§ _.42(a), _.43(e)(2), and _.43(e)(3) and 16 CFR §§ 660.3(a), 660.4(e)(2), and 660.4(e)(3).

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by R–1300, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

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

• *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.

• *Fax:* 202–452–3819 or 202–452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit written comments, which should refer to 3064–AC99, by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.

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

• *E-mail: Comments@FDIC.gov*.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 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.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any

personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1007, 3501 North Fairfax Drive, Arlington, Virginia, between 9 a.m. and 4:30 p.m. on business days.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Notice of Proposed Rulemaking Part 717, Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Neil McNamara, Deputy Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Additionally, you should send a copy of your comments to the OMB Desk Officer for the Agencies, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., 10235, Washington, DC 20503, or by fax to (202) 395–6974.

FTC: Comments should refer to ''Furnisher Rules, Project No. R611017,'' and may be submitted by any of the following methods. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [30]

- *E-mail:* Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-FACTAfurnishers* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-FACTAfurnishers*.
- *Federal eRulemaking Portal:* If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.
- *Mail or Hand Delivery:* A comment filed in paper form should include ''Furnisher Rules: Project No. R611017,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed above. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Proposed Information Collection

Title of Information Collection: Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies.

Frequency of Response: On occasion.

Affected Public:

OCC: National banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

Board: State member banks, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

FDIC: Insured nonmember banks, insured state branches of foreign banks, and certain subsidiaries of these entities.

OTS: Savings associations and certain of their subsidiaries.

NCUA: Federally-chartered credit unions.

FTC: Businesses that furnish information to a consumer reporting agency, and are subject to administrative enforcement by the FTC pursuant to section 621(a)(1) of the FCRA (15 U.S.C. 1681s(a)(1).

Abstract: Proposed section .42(a) [31] would require a furnisher to implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that it provides to a CRA. Furnishers already have an ongoing responsibility under section 623 of the FCRA for accurate reporting, which has been in place for several years, long before the FACT Act. This proposed rule would require furnishers to put into writing policies and procedures that address their section 312 responsibilities regarding the accuracy and integrity of information. Furnishers' accuracy and integrity policies and

[30] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[31] For purposes of the FTC regulations, this proposed section is 16 CFR 660.3(a).

procedures may include their existing policies and procedures that are reasonable and appropriate. The Agencies estimate it would take furnishers a total of 21 hours per institution to comply with this requirement.

Proposed section .43(a)[32] would allow consumers to initiate disputes directly with the furnishers, instead of using the existing FCRA process through the CRAs. This gives consumers a new way to dispute consumer report information; instead of having to go through a CRA, consumers would have the right to go directly to the furnisher in certain circumstances. Furnishers already have affirmative responsibilities to research and respond and, if necessary, make any corrections when a dispute is initiated by consumers through a CRA. Under this proposed rule, furnishers would have to follow a substantially similar process for disputes consumers submit directly to furnishers. Furnishers would need to amend their procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs. The Agencies estimate that furnishers would have to devote four hours per institution to amend their procedures in this manner. Proposed section _.43(e)(2)[33] incorporates the section 312 requirement that a furnisher must notify a consumer by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant. Proposed section _.43(e)(3)[34] incorporates the content requirements of such notices as specified by section 312. The Agencies estimate that furnishers would have to devote four hours per institution to implement this notice requirement, including the time necessary to develop policies and procedures regarding the provision of the notices to consumers and to initially prepare the notices.

With respect to estimating the potential burden associated with providing the notices to consumers, the Agencies received one comment on the ANPR from a financial institution stating that it is estimated that 50% of disputes received are frivolous or irrelevant. In contrast, one trade association commented that in only 25% of disputes is the information in the consumer report being challenged verified as correct; thus, even assuming that every time the information in the consumer report is verified as correct the underlying dispute was frivolous or irrelevant, a maximum of 25% of disputes could be frivolous or irrelevant. The Agencies are also aware that a significant number of furnishers are already providing consumers with a written notice in response to direct disputes. Further, commenters from both industry and consumer groups observed that disputes filed with CRAs from credit repair organizations have been particularly likely to be rejected, though they disagreed on the reasons. Considering all of these comments and information, and taking into account that direct disputes from credit repair organizations are prohibited by section 623(a)(8)(G) of the FCRA, the Agencies believe it is reasonable to estimate that the number of written notices that furnishers provide to consumers in response to direct disputes that are frivolous or irrelevant would increase by 10%. The Agencies estimate that furnishers would devote five minutes per notice to provide a notice to a consumer.

Estimated Burden:[35]

Thus, the burden associated with this collection of information may be summarized as follows.

OCC

Number of respondents: 1,800.

Number of frivolous or irrelevant dispute notices: 312,335.

Estimated burden per notice: 5 minutes.

Estimated burden per respondent: 21 hours to implement written policies and procedures and training associated with the written policies and procedures, 4 hours to amend procedures for handling complaints received directly from consumers, 4 hours to implement the new dispute notice requirement.

Total estimated annual burden: 78,228 hours.

Board

In accordance with the PRA (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board has reviewed the proposed rule under its authority delegated by OMB. The proposed information collections associated with this rulemaking, if approved, will be incorporated into the Recordkeeping and Disclosure Requirements Associated with Regulation V (Fair Credit Reporting) and will be assigned OMB No. 7100–0308. The burden estimates provided below pertain only to the information collections associated with this proposed rulemaking.

Number of respondents: 1,172.

Number of frivolous or irrelevant dispute notices: 116,582.

Estimated burden per respondent: 21 hours to implement written policies and procedures and training associated with the written policies and procedures, 4 hours to amend procedures for handling complaints received directly from consumers, 4 hours to implement the new dispute notice requirement, and 5 minutes per notice for distribution.

Total estimated annual burden: 43,703 hours.

FDIC

Number of respondents: 5,260.

Number of frivolous or irrelevant dispute notices: 24,198.

Estimated burden per respondent to implement written policies and procedures regarding accuracy and integrity and the frivolous or irrelevant dispute notice: 29 hours.

Estimated burden per frivolous or irrelevant dispute notice: 5 minutes.

Total estimated annual burden: 154,557 hours.

OTS

Number of respondents: 829.

Number of frivolous or irrelevant dispute notices: 15,001.

Estimated burden per respondent: 21 hours to implement written policies and procedures and training associated with the written policies and procedures, 4 hours to amend procedures for handling complaints received directly from consumers, 4 hours to implement the new dispute notice requirement, and 5 minutes per notice for distribution.

Total estimated annual burden: 25,286 hours.

NCUA

Number of respondents: 5,103.

Estimated burden per respondent: 29 hours.

Number of frivolous or irrelevant dispute notices: 3,044.

Estimated burden per notice: 5 minutes.

Total estimated annual burden: 148,241 hours.

FTC[36]

Section 660.3:

Estimated Hours Burden:

As discussed above, the proposed regulations would require furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of

[32] 16 CFR 660.4(a) in the FTC regulations.

[33] 16 CFR 660.4(e)(2) in the FTC regulations.

[34] CFR 660.4(e)(3) in the FTC regulations.

[35] The Estimated Burden section reflects the views of all of the Agencies except the FTC, which has prepared a separate analysis.

[36] Due to the varied nature of the entities subject to the jurisdiction of the FTC, this Estimated Burden section reflects only the view of the FTC. The banking regulatory agencies have jointly prepared a separate analysis.

the information relating to consumers that it furnishes to a CRA. The proposed regulations would define ''furnisher'' to mean an entity other than an individual consumer that furnishes information relating to consumers to one or more CRAs, except when it provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA.[37] Given the broad scope of furnishers, it is difficult to determine precisely the number of furnishers that are subject to the FTC's jurisdiction. Nonetheless, FTC staff estimates that the proposed regulations in section 660.3 will affect approximately 6,133 furnishers subject to the FTC's jurisdiction.[38] The Commission invites comment and information about the categories and number of furnishers subject to its jurisdiction. As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 51,000 hours (rounded to the nearest thousand). The estimated annual labor cost associated with this burden is $1,985,000 (rounded to the nearest thousand).

The proposed regulations are drafted in a flexible manner that allows entities to establish and implement different types of written policies and procedures based upon the nature, size, complexity, and scope of their activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. The Commission believes that many entities have already implemented a significant portion of the policies and procedures required by the proposed rule. Entities have had an ongoing requirement under Section 623 of the FCRA to provide accurate information when they choose to furnish data to consumer reporting agencies. The written policies and procedures proposed in the rule would formalize the processes and controls necessary for accurate reporting. Accordingly, FTC staff estimates that entities will require 21 hours to establish and implement written policies and procedures, including the incremental time to train staff to implement these policies and procedures, with an annual recurring burden of 2 hours.

FTC staff estimates that the proposed regulations implementing section 623(e) affect 6,133 furnishers subject to the FTC's jurisdiction at an average annual burden of 8.33 hours per entity [average annual burden over 3-year clearance period for establishment and implementation of written policies and procedures (25 hours/3)], for a cumulative total of 51,000 hours (rounded to the nearest thousand).

Estimated Cost Burden:

The FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of management and/or technical staff among companies of different sizes. In calculating the cost figures, staff assumes that managerial and/or professional technical personnel will draft the written policies and procedures and train staff, at an hourly rate of $38.93.[39]

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the proposed regulations in section 660.3 are $1,985,000 (rounded to the nearest thousand) [(51,000 hours × $38.93)].

Section 660.4:

Estimated Hours Burden:

The proposed regulations would also require entities that furnish information about consumers to respond to direct disputes from consumers. FTC staff estimates that the proposed regulations in section 660.4 will also affect approximately 6,133 furnishers subject to the FTC's jurisdiction. As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 17,000 hours (rounded to the nearest thousand). The estimated annual labor cost associated with this burden is $641,000 (rounded to the nearest thousand).

FTC staff estimates that it will take furnishers four hours to amend their procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs. FTC staff believes that furnishers of information to CRAs will have automated the process of responding to direct disputes in the first year of the clearance, therefore, there will be no annual recurring burden. FTC staff estimates that it will take furnishers four hours in the first year to implement the requirement to notify a consumer by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant. FTC staff believes that furnishers will also automate this process in the first year of clearance, so there will be no annual recurring burden.

FTC staff further estimates that to prepare and distribute a notice to a consumer after a furnisher determines that a dispute is frivolous or irrelevant will require approximately five minutes per notice. FTC staff projects that furnishers under its jurisdiction would receive 5,430 frivolous or irrelevant disputes requiring a notice each year.[40] Accordingly, FTC staff estimates it will take furnishers 452 hours for each of the three years for which OMB clearance is sought. The estimated annual labor cost associated with this burden is $6,102.

Estimated Cost Burden:

The FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of different types of support staff among companies of different sizes. Nonetheless, in calculating the cost figures, staff assumes managerial and/or professional technical personnel will amend procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs and will implement the requirement to notify a consumer by mail or other means, after making a determination that a dispute is frivolous or irrelevant, at an hourly rate of $38.93.[41] Staff assumes that administrative support personnel will provide the required notices to consumers, at an hourly rate of $13.50.[42]

Based on the above estimates and assumptions, the total average annual labor costs for all categories of covered

[37] 15 U.S.C. 1681b(a).

[38] This estimate is derived from the number of furnishers reporting to the three nationwide CRAs (approximately 18,000), minus the number of entities subject to jurisdiction by the federal financial agencies and the NCUA (14,167 combined), and adding the number of furnishers to medical information bureaus (approximately 500) and the number of insurance companies furnishing information to other types of CRAs (approximately 1,800).

[39] This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for management occupations.

[40] This number is derived from an estimate of disputes per year that relate to information provided by an entity under the FTC's jurisdiction and the Agencies' estimated 10% increase of the number of written notices that furnishers will provide to consumers in response to direct disputes that are frivolous or irrelevant.

[41] This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for management occupations.

[42] This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for office and administrative support occupations.

entities under the proposed regulations in section 660.4 are $641,000 (rounded to the nearest thousand) [((1.33 + 1.33 hours) × 6,133 × $38.93) + $6102].

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (5 U.S.C. 601—612) (RFA) requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA and OCC-regulated entities, a ''small entity'' is a national bank with assets of $165 million or less (small national bank). Based on its analysis and for the reason stated below, OCC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Based on two tests used to evaluate the impact of the proposed rule (compliance costs as a percent of labor costs and compliance costs as a percent of non-interest expenses) the OCC estimates that the proposed rule would have a significant economic impact on 7 of 948 small national banks (.074 percent); the OCC does not consider this to be a substantial number of small entities.

1. Reasons for Proposed Rule

The FACT Act amends the FCRA and was enacted, in part, for the purpose of enhancing the accuracy and integrity of information furnished to CRAs. Section 312 of the FACT Act generally requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. OCC is issuing this proposed rule to implement section 312 of the FACT Act.

2. Statement of Objectives and Legal Basis

The objectives of the proposed rule are described in the **SUPPLEMENTARY INFORMATION** section. In sum, the objectives are: (1) To implement the general statutory provision that requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines and (2) to fulfill the statutory mandate requiring the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. The legal bases for the proposed rule are the National Bank Act found at 12 U.S.C. 1 *et seq.*, 24 (Seventh), 481, and 484; the Depository Institutions Deregulation and Monetary Control Act of 1980 found at 12 U.S.C. 93a; the Federal Deposit Insurance Act found at 12 U.S.C. 1818; and the Fair Credit Reporting Act found at 15 U.S.C. 1681 *et seq.*

3. Description and Estimate of Small Entities Affected by the Final Rule

The proposed rule would apply to national banks, Federal branches and agencies of foreign banks, and any of their operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)) (national banks).

OCC estimates that its proposed rule would apply to 948 small national banks with assets of $165 million or less.

4. Projected Recordkeeping, Reporting, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in the **SUPPLEMENTARY INFORMATION** above.

In general, the proposal would require each furnisher subject to the rule to establish and implement reasonable policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. Furnishers would be required to consider the guidelines in Appendix E to the proposed rule in developing these policies and procedures and to incorporate those guidelines that are appropriate. The Agencies have sought to reduce the burden associated with these proposed accuracy and integrity regulations and guidelines in several ways. First, the proposed guidelines provide that a furnisher may include in its policies and procedures concerning the accuracy and integrity of information it furnishes to consumer reporting agencies any of its existing policies and procedures that are relevant and appropriate. Furnishers have a preexisting obligation under Section 623 of the FCRA to provide accurate information when they furnish data to consumer reporting agencies. The OCC believes that many furnishers are likely to have existing policies and procedures regarding accurate reporting in order to satisfy their obligations under section 623, and that these policies and procedures could be incorporated in the policies and procedures required by the proposed rule.

Furnishers subject to the proposed rule also would be required, under certain circumstances, to investigate disputes concerning the accuracy of information about the consumer contained in a consumer report based on a direct request of a consumer. While the rule would require new procedural requirements, the OCC believes that investigating direct disputes will not create significant additional burdens on small institutions, for a number of reasons.

First, most furnishers already investigate similar disputes that are provided to them by a consumer reporting agency pursuant to the existing dispute provisions contained in section 611 of the FCRA.

Second, commenters on the ANPR noted that many furnishers already investigate direct disputes as a matter of good customer relations, sound business practices, or because they are required to do so under other consumer protection laws. National banks also investigate disputes referred to them by the OCC's Customer Assistance Group as well as other state and Federal regulators.

Finally, the proposed rule does not require investigation of direct disputes when such disputes are frivolous or irrelevant.

The OCC seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small national banks.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The OCC is unable to identify any statutes or rules, which would overlap or conflict with the proposed regulation. The OCC seeks comment and information about any such statutes or rules, as well as any other state, local, or industry rules or policies that require a covered institution to implement business practices that would comply with the requirements of the proposed rule.

6. Discussion of Significant Alternatives

As required by the FACT Act, the proposed rules and guidelines apply to all covered institutions, regardless of the size of the institution. One approach to minimizing the burden on small entities would be to provide a specific exemption for small institutions. The OCC has no authority under section 312 of the FACT Act to grant an exception that would remove small institutions from the scope of the rule.

The proposed rule does, however, provide substantial flexibility so that any national bank, regardless of size, may tailor its practices to its individual needs. For example, to minimize burden the proposal would permit institutions to include in their accuracy and integrity policies and procedures their existing policies and procedures that are relevant and appropriate. Furthermore, OCC and the other Agencies have attempted to minimize burden by: Adopting consistent rules; proposing and soliciting comment on two approaches for defining the terms ''accuracy'' and ''integrity''; incorporating into the proposed rule at § 41.42(a) a statement that policies and procedures should be appropriate to the nature, size, complexity, and scope of a furnisher's activities; and providing furnishers with three options for providing their direct disputes address to consumers under proposed § 41.43(c).

The OCC welcomes comments on any significant alternatives that are consistent with section 312 of the FACT Act.

Board: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include commercial banks and other depository institutions with $165 million or less in assets). The Board requests public comment in the following areas.

1. Reasons for the Proposed Rule

Section 312 of the FACT Act (which amends section 623 of the FCRA) requires the Agencies to issue regulations and guidelines relating to the responsibilities of furnishers of information about consumers to consumer reporting agencies for the purpose of enhancing the accuracy and integrity of the information furnished. Specifically, the Agencies must: (i) Establish and maintain guidelines for use by furnishers regarding the accuracy and integrity of the information relating to consumers that they furnish to consumer reporting agencies, and update those guidelines as often as necessary; and (ii) prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. In addition, the Agencies must prescribe joint regulations that identify the circumstances, if any, under which furnishers must investigate disputes about the accuracy of the information contained in a consumer report on the consumer based on a direct request by a consumer, rather than requiring consumers to initiate a dispute through a consumer reporting agency.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for the proposed rule is section 312 of the FACT Act.

3. Description of Small Entities to Which the Rule Applies

The proposed regulations would apply to all banks that are members of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*). The Board's proposed regulations would apply to the following institutions (numbers approximate): State member banks (881), operating subsidiaries that are not functionally regulated with in the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (877), U.S. branches and agencies of foreign banks (219), commercial lending companies owned or controlled by foreign banks (3), and Edge and agreement corporations (64), for a total of approximately 2,044 institutions. The Board estimates that more than 1,448 of these institutions could be considered small entities with assets of $165 million or less.

All small entities covered by the Board's rule potentially could be subject to the proposed rule. However, the proposed rule would not impose any requirements on small entities that do not furnish information about consumers to consumer reporting agencies.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed rules are described in the **SUPPLEMENTARY INFORMATION** above.

In general, the proposal would require each furnisher subject to the rule to establish and implement reasonable policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. Such furnishers would be required to consider the guidelines in Appendix E to the proposed rule in developing these policies and procedures, and to incorporate those guidelines that are appropriate. The Agencies have sought to reduce the burden associated with these proposed accuracy and integrity regulations and guidelines in several ways. First, the proposed guidelines provide that a furnisher may include in its policies and procedures concerning the accuracy and integrity of information it furnishes to consumer reporting agencies any of its existing policies and procedures that are relevant and appropriate. Furnishers have a preexisting obligation under Section 623 of the FCRA to provide accurate information when they furnish data to consumer reporting agencies. The Board believes that many furnishers are likely to have existing policies and procedures regarding accurate reporting in order to satisfy their obligations under section 623, and that these policies and procedures could be incorporated in the policies and procedures required by the proposed rule.

Furnishers subject to the proposed rule also would be required, under the circumstances described in the proposed rule, to investigate disputes concerning the accuracy of information about the consumer contained in a consumer report based on a direct request of a consumer. While the rule would require new procedural requirements, the Board believes that investigating direct disputes will not create significant additional burdens on small institutions, for a number of reasons. First, most furnishers already investigate similar disputes upon receipt from the relevant consumer reporting agency pursuant to the existing dispute provisions contained in section 611 of the FCRA. Second, commenters on the ANPR noted that many furnishers already investigate direct disputes as a matter of good customer relations and sound business practices or because they are required to under other consumer protection laws. Finally, the proposed rule does not

require investigation of direct disputes when such disputes are frivolous or irrelevant.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

6. Discussion of Significant Alternatives

The proposed rule provides substantial flexibility so that each institution, regardless of its size, may tailor its practices to its individual needs. For example, as discussed above, in order to minimize burden the proposal would permit institutions to include in their accuracy and integrity policies and procedures any of their existing policies and procedures that are relevant and appropriate.

The Board welcomes comments on any significant alternatives, consistent with the requirements of section 312 of the FACT Act, that would minimize the impact of the proposed rule on small entities.

FDIC: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), an agency must publish an initial regulatory flexibility analysis with its proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with less than $165 million in assets). The FDIC hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule would apply to most FDIC-insured state nonmember banks, approximately 3,400 of which are small entities. Under the proposed rule, financial institutions that furnish information about consumers to one or more consumer reporting agencies must have written policies and procedures regarding the accuracy and integrity of that information. The program must be appropriate to the nature, size, complexity and scope of the furnishing activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. Institutions have had an ongoing requirement under Section 623 of the FCRA to provide accurate information when they choose to furnish data to consumer reporting agencies. The written policies and procedures proposed in the rule would formalize the processes and controls necessary for accurate reporting. Similarly, the proposed guidelines in Section II of Appendix E of the Regulation contain requirements that were already in the FCRA. Federal Financial Institutions Examination Council examination procedures exist and have been used for years to evaluate compliance with the aspects of Section 623 of the FCRA. Based on our examination of the financial institutions we supervise, the FDIC believes that many of these institutions have already implemented a significant portion of the policies and procedures required by the proposed rule, whether under the definition of ''integrity'' proposed in the Regulatory Definition Approach or the definition in the Guidelines Definition Approach, as discussed in the Supplementary Information above. The process of furnishing information to consumer reporting agencies is largely automated. With regard to the two alternatives concerning the ''integrity'' of information, the automated furnishing systems already support for the type of information that a furnisher would provide under either approach.

Nonetheless, the FDIC specifically requests comment and specific data on the size of the incremental burden on small banks in formalizing the policies and procedures not currently included, given the banks' current practices and compliance with existing requirements.

The proposed rule would also require financial institutions that furnish information about consumers to respond to direct dispute requests from consumers with regard to certain perceived inaccuracies. While the rule would require new procedural requirements, including direct dispute notices, the FDIC believes that investigating direct disputes will not create significant additional burdens on small banks, for a number of reasons.

First, most furnishers are already investigating similar disputes, which under the current law are brought directly to the relevant consumer reporting agency, which then contacts the furnisher for an investigation. Under this procedure, furnishers are already required to review all relevant information provided by the consumer reporting agency along with the notice; report the results of the investigation to the consumer reporting agency; if the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information; and if the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, promptly, for purposes of reporting to the consumer reporting agency modify the item of information, delete the item of information, or permanently block the reporting of that item of information.

Second, many of these furnishers are already investigating direct disputes as a matter of good customer relations and sound business practices or under other consumer protection laws.

Third, the proposed rule does not require investigation in cases that are frivolous or irrelevant. Nonetheless, the FDIC again specifically requests comment and specific data on the size of the incremental burden creating a program would have on small banks, given their current practices and compliance with existing requirements.

OTS: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA and OTS-regulated entities, a ''small entity'' is a savings association with assets of $165 million or less (small savings association). Based on its analysis and for the reason stated below, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

1. Reasons for Proposed Rule

The FACT Act amends the FCRA and was enacted, in part, for the purpose of enhancing the accuracy and integrity of information furnished to CRAs. Section 312 of the FACT Act generally requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. OTS is issuing

this proposed rule to implement section 312 of the FACT Act.

2. Statement of Objectives and Legal Basis

The objectives of the proposed rule are described in the **SUPPLEMENTARY INFORMATION** section. In sum, the objectives are: (1) To implement the general statutory provision that requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines and (2) to fulfill the statutory mandate requiring the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. The primary legal basis for the proposed rule is the Fair Credit Reporting Act found at 15 U.S.C. 1681 *et seq.*

3. Description and Estimate of Small Entities Affected by the Final Rule

The proposed rule would apply to savings associations and operating subsidiaries of federal savings associations that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

OTS estimates that its proposed rule would apply to 412 small savings associations with assets of $165 million or less.

4. Projected Recordkeeping, Reporting, and Other Compliance Requirements

Under the proposed rule, financial institutions that furnish information about consumers to one or more consumer reporting agencies must have written policies and procedures regarding the accuracy and integrity of that information. The program must be appropriate to the nature, size, complexity and scope of the furnishing activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. Institutions have had an ongoing requirement under Section 623 of the FCRA to provide accurate information when they choose to furnish data to consumer reporting agencies. The written policies and procedures proposed in the rule would formalize the processes and controls necessary for accurate reporting. Similarly, the proposed guidelines in Section II of Appendix E of the Regulation contain requirements that were already in the FCRA. Federal Financial Institutions Examination Council examination procedures exist and have been used for years to evaluate compliance with the aspects of Section 623 of the FCRA. Based on our examination of the financial institutions we supervise, OTS believes that many of these institutions have already implemented a significant portion of the policies and procedures required by the proposed rule, whether under the definition of ''integrity'' proposed in the Regulatory Definition Approach or the definition in the Guidelines Definition Approach, as discussed in the Supplementary Information above. The process of furnishing information to consumer reporting agencies is largely automated. With regard to the two alternatives concerning the ''integrity'' of information, the automated furnishing systems already support the type of information that a furnisher would provide under either approach.

Nonetheless, OTS specifically requests comment and specific data on the size of the incremental burden on small savings associations in formalizing the policies and procedures not currently included, given the associations' current practices and compliance with existing requirements.

The proposed rule would also require financial institutions that furnish information about consumers to respond to direct dispute requests from consumers with regard to certain perceived inaccuracies. While the rule would require new procedural requirements, including direct dispute notices, OTS believes that investigating direct disputes will not create significant additional burdens on small savings associations, for a number of reasons.

First, most furnishers are already investigating similar disputes, which under the current law are brought directly to the relevant consumer reporting agency, which then contacts the furnisher for an investigation. Under this procedure, furnishers are already required to review all relevant information provided by the consumer reporting agency along with the notice; report the results of the investigation to the consumer reporting agency; if the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information; and if the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, promptly, for purposes of reporting to the consumer reporting agency modify the item of information, delete the item of information, or permanently block the reporting of that item of information.

Second, many of these furnishers are already investigating direct disputes as a matter of good customer relations and sound business practices. Many are also investigating disputes brought to the institution through OTS's customer complaint system.

Third, the proposed rule does not require investigation for disputes that are frivolous or irrelevant.

Fourth, savings associations already have mechanisms and processes in place to handle consumer complaints brought under other laws such as the Truth in Lending Act, Real Estate Settlement Procedures Act, and Electronic Funds Transfer Act. OTS believes many of these mechanisms and processes can be readily adapted to handle consumer disputes about their consumer reports.

Nonetheless, OTS specifically requests comment and specific data on the size of the incremental burden creating a program would have on small savings associations, given their current practices and compliance with existing requirements.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

OTS is unable to identify any statutes or rules, which would overlap or conflict with the proposed regulation. OTS seeks comment and information about any such statutes or rules, as well as any other state, local, or industry rules or policies that require a covered institution to implement business practices that would comply with the requirements of the proposed rule.

6. Discussion of Significant Alternatives

As required by the FACT Act, the proposed rules and guidelines apply to all covered institutions, regardless of the size of the institution. One approach to minimizing the burden on small entities would be to provide a specific exemption for small institutions. OTS has no authority under section 312 of the FACT Act to grant an exception that would remove small institutions from the scope of the rule.

The proposed rule does, however, provide substantial flexibility so that any savings association, regardless of size, may tailor its practices to its individual needs. For example, to minimize burden the proposal would permit institutions to include in their accuracy and integrity policies and

procedures their existing policies and procedures that are relevant and appropriate. Furthermore, OTS and the other Agencies have attempted to minimize burden by: Adopting consistent rules; proposing and soliciting comment on two approaches for defining the terms ''accuracy'' and ''integrity''; incorporating into the proposed rule at § _.42(a) a statement that policies and procedures must be appropriate to the nature, size, complexity, and scope of a furnisher's activities; and providing furnishers with a three options for providing their direct disputes address to consumers under proposed § _.43(c).

OTS welcomes comments on any significant alternatives that are consistent with section 312.

NCUA: Under the RFA, NCUA must publish an initial regulatory flexibility analysis with its proposed rule, unless NCUA certifies the rule will not have a significant economic impact on a substantial number of small entities. For NCUA, these are federal credit unions with less than $10 million in assets. NCUA certifies this proposed rule would not have a significant economic impact on a substantial number of small entities.

Under the proposed rule, federal credit unions furnishing information about consumers to consumer reporting agencies (CRAs) must have a written program on the information's accuracy and integrity. The program must be appropriate to the nature, size, complexity and scope of the furnishing activities. The federal credit union can include its existing policies and procedures in its program under the proposed rule. Federal credit unions already are required under FCRA section 623 to provide accurate information when they furnish data to CRAs. The proposed rule would formalize the processes and controls for accurate reporting. Likewise, the proposed guidelines contain requirements already in the FCRA section 623.

Accordingly, NCUA requests comment and specific data on any additional burden on small federal credit unions in making their current accuracy and integrity programs consistent with existing requirements.

The proposed rule would also require federal credit unions that furnish consumer information to CRAs to respond to consumers' direct dispute requests to correct credit report inaccuracies. The rule would require new procedural requirements, including direct dispute notices, but the NCUA believes that investigating direct disputes will not create significant additional burdens on small federal credit unions, for the following reasons.

First, most furnishers already investigate consumer dispute requests, even if under the current law, the consumers complain directly to the relevant CRA, which then contacts the federal credit union to investigate. Currently, furnishers must review all relevant information the CRA provides with the notice; report the investigation results to the CRA; if the disputed information is determined to be incomplete or inaccurate, report this to all nationwide CRAs to which the federal credit union previously provided the information; and if the disputed information is incomplete, inaccurate, or not verifiable by the federal credit union, promptly, for purposes of reporting to the CRA, modify the item of information, delete the item of information, or permanently block the reporting of that item of information.

Second, many federal credit unions already investigate direct disputes as part of good member relations and sound business practices or under other consumer protection laws.

Third, the proposed rule does not require investigation in cases that are frivolous or irrelevant. Nonetheless, NCUA specifically requests comment and specific data on the size of the incremental burden creating a program would have on small federal credit unions, given their current practices and compliance with existing requirements.

FTC: The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

Based on its analysis and for the reasons stated below, the Commission does not anticipate that the proposed regulations will have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comments on whether the proposed regulations will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed regulations, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the regulations proposed in this notice would not, if promulgated, have a significant economic impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed regulations on small entities. Therefore, the Commission has prepared the following analysis:

1. Description of the Reasons That Action by the Agency Is Being Taken

The Federal Trade Commission is charged with enforcing the requirements of section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (15 U.S.C. 1681a–2(a)(8) and 1681a–2(e)), which require the agency to issue these proposed regulations.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

The objectives of the proposed rule are described in the **SUPPLEMENTARY INFORMATION** section. In sum, the objectives are: (1) To implement the general statutory provision that requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines and (2) to fulfill the statutory mandate requiring the Agencies to prescribe regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. The legal basis for the proposed regulations is 15 U.S.C. 1681a–2(a)(8) and 1681a–2(e).

3. Small Entities To Which the Proposed Rule Will Apply

The proposed rule would apply to ''an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies,'' except when it ''provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.'' In short, the rule would apply to any entity that (1) is under the FTC's jurisdiction pursuant to the FCRA and (2) furnishes information relating to consumers to one or more consumer reporting agencies.

Generally, the proposed regulations would apply to financial institutions, creditors, and other entities that furnish information relating to consumers to consumer reporting agencies. In particular, entities under FTC's jurisdiction covered by section 312 include state-chartered credit unions, non-bank lenders, insurers, debt collectors, and any other entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. The available data is not sufficient for the Commission to realistically estimate the number of entities the Commission regulates that would be subject to the proposed rule and that are small as defined by the Small Business Administration.[43] The Commission invites comment and information on the number and type of small entities affected by the proposed rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

Under the proposed rule, entities that furnish information about consumers to one or more consumer reporting agencies must have written policies and procedures regarding the accuracy and integrity of that information. The program must be appropriate to the nature, size, complexity, and scope of the furnishing activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. Entities have had an ongoing requirement under Section 623 of the FCRA to provide accurate information when they choose to furnish data to consumer reporting agencies. The written policies and procedures proposed in the rule would formalize the processes and controls necessary for accurate reporting. Similarly, the proposed guidelines in Section II of Appendix A of the Regulation contain requirements that are already included in the FCRA.

Entities under the FTC's jurisdiction covered by this rule include state-chartered credit unions, non-bank lenders, insurers, debt collectors, and any other entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. In calculating costs, FTC staff assumes that for all entities, managerial and/or professional technical personnel will draft the written policies and procedures regarding the accuracy and integrity of furnished information.

The Commission believes that many entities have already implemented a significant portion of the policies and procedures required by the proposed rule, whether under the definition of ''integrity'' proposed in the Regulatory Definition Approach or the definition in the Guidelines Definition Approach, as discussed in the **SUPPLEMENTARY INFORMATION** above. The process of furnishing information to consumer reporting agencies is often automated. With regard to the two alternatives concerning the ''integrity'' of information, the automated furnishing systems already support the type of information that a furnisher would provide under either approach.

Nonetheless, the Commission specifically requests comment and specific data on the size of the incremental burden on small entities in formalizing the policies and procedures not currently included, given the entities' current practices and compliance with existing requirements.

The proposed rule would also require entities that furnish information about consumers to respond to direct disputes from consumers. The rule would require new procedural requirements, including direct dispute notices.

Entities under the FTC's jurisdiction covered by this rule include state-chartered credit unions, non-bank lenders, insurers, debt collectors, and any other entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. In calculating costs, FTC staff assumes that managerial and/or professional technical personnel will adapt mechanisms and processes to handle consumer disputes about their consumer reports and administrative support personnel will provide any required notices to consumers.

The Commission believes that investigating direct disputes will not create significant additional burdens on covered entities for a number of reasons.

First, most furnishers are already investigating similar disputes, which under the current law are brought directly to the relevant consumer reporting agency, which then contacts the furnisher for an investigation. Under this procedure, furnishers are already required to review all relevant information provided by the consumer reporting agency along with the notice of dispute; report the results of the investigation to the consumer reporting agency; if the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the furnisher previously provided the information; and if the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, promptly, for the purposes of reporting to the consumer reporting agency to modify the item of information, delete the item of information, or permanently block the reporting of that item of information.

Second, many of these furnishers are already investigating direct disputes as a matter of good customer relations and sound business practices.

Third, the proposed rule does not require investigation for disputes that are frivolous or irrelevant.

Fourth, many furnishers already have mechanisms and processes in place to handle consumer disputes brought under other laws such as the Fair Debt Collection Practices Act (15 U.S.C. 1692–1692p), Truth in Lending Act (15 U.S.C. 1601–1665b), Fair Credit Billing Act (15 U.S.C. 1666–1666j), Real Estate Settlement Procedures Act (12 U.S.C. 2601–2627), and Electronic Funds Transfer Act (15 U.S.C. 1693–1693r). The Commission believes that many of these mechanisms and processes can be readily adapted to handle consumer disputes about their consumer reports.

Nonetheless, the Commission specifically requests comment and specific data on the size of the incremental burden that creating a program would have on small entities, given their current practices and compliance with existing requirements.

5. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. As noted in Section 4, however, compliance with some provisions of other federal statutes will facilitate compliance with the proposed rule by furnishers of information to consumer reporting agencies. The Commission invites comment and information about any statutes or rules that may duplicate, overlap, or conflict with the proposed Rule.

6. Significant Alternatives to the Proposed Rule

The standards in the proposed Rule are flexible so that a covered entity, regardless of size, may tailor its practices to its individual needs. For example, to minimize the burden the proposal would permit entities to include in their accuracy and integrity

[43] The size standard to be considered a small business for the majority of the non-bank creditors, insurers, and debt collectors that are subject to the Commission's jurisdiction is to have average annual receipts that are $6.5 million or less. A list of the SBA's size standards for all industries can be found at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

policies and procedures their existing policies and procedures that are relevant and appropriate. Furthermore, the FTC and other Agencies have attempted to minimize the burden by: adopting consistent rules; incorporating into the proposed rule at § 660.3 a statement that policies and procedures should be appropriate to the nature, size, complexity, and scope of a furnisher's activities; and providing furnishers with three options for providing their direct disputes address to consumers under proposed § 660.4. Nevertheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirement, would reduce the economic impact of the rule on small entities.

If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

C. OCC and OTS Executive Order 12866 Determinations

The OCC and OTS each determined that its portion of the proposed rulemaking is not a significant regulatory action under Executive Order 12866.

D. OCC and OTS Executive Order 13132 Determinations

The OCC and the OTS each determined that its portion of the proposed rulemaking does not have any federalism implications for purposes of Executive Order 13132.

E. NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5) voluntarily complies with the Executive Order. The proposed rules and guidelines apply only to federally chartered credit unions and would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that these proposed rules and guidelines do not constitute a policy that has federalism implications for purposes of the Executive Order.

F. OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

G. NCUA: The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

VII. 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 OCC, Board, FDIC, and OTS to use plain language in all proposed and final rules published after January 1, 2000. Therefore, these agencies specifically 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 regulations and guidelines clearly stated? If not, how could the regulations and guidelines be more clearly stated?
- Do the proposed regulations and guidelines 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 regulations and guidelines easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the regulations and guidelines easier to understand?

VIII. Communications by Outside Parties to FTC Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any FTC Commissioner or FTC Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

List of Subjects

12 CFR Part 41

Banks, banking, Consumer protection, National Banks, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, banking, Holding companies, state member banks.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 571

Consumer protection, Credit, Fair credit reporting, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 717

Consumer protection, Credit unions, Fair credit reporting, Privacy, Reporting and recordkeeping requirements.

16 CFR Part 660

Consumer reports, Consumer reporting agencies, Fair credit reporting, Information furnishers, Identity theft, Trade practices.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of title 12 of the Code of Federal Regulations by amending 12 CFR part 41 as follows:

PART 41—FAIR CREDIT REPORTING

1. Revise the authority citation for part 41 to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, and 1681w; Sec. 214, Pub. L. 108–159, 117 Stat. 1952.

2. Add a new subpart E to part 41 to read as follows:

Subpart E—Duties of Furnishers of Information

Sec.
41.40 Scope.
41.41 Definitions.
41.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.
41.43 Direct disputes.

Subpart E—Duties of Furnishers of Information

§ 41.40 Scope.

This subpart applies to a national bank, Federal branch and agency of a foreign bank, and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

§ 41.41 Definitions.

For purposes of this subpart and Appendix E of this part, the following definitions apply:

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

(d) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(e) *Direct dispute* means a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer.

§ 41.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in Appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 41.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer); or

(v) Information related to fraud alerts or active duty alerts; or

(2) The direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraph (c)(2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

(3) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(4) All supporting documentation or other information reasonably required

by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: A copy of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute may be frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute under this section.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information.

3. Add a new appendix E to read as follows:

Appendix E to Part 41—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The OCC encourages voluntary furnishing of information to consumer reporting agencies. Section 41.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 41.42(b), the furnisher must consider the guidelines set forth below in developing these policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 41.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The furnisher's policies and procedures should reflect, for example:

1. The types of business activities in which the furnisher engages;

2. The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

3. The technology used by the furnisher to furnish information to consumer reporting agencies.

Regulatory Definition Approach for Paragraph B Follows

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations;

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship;

5. Ensure that the information it furnishes about accounts or other relationships with a consumer is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is:

(A) Reported with appropriate identifying information about the consumer to whom it pertains;

(B) Reported in a standardized and clearly understandable form and manner; and

(C) Reported with a date specifying the time period to which the information pertains; and

(ii) Substantiated by the furnisher's own records;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; and

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to:[1]

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 41.43 and 15 U.S.C. 1681s–2(a)(8).

III. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

A. Identify practices or activities of the furnisher that can compromise the accuracy and integrity of information furnished to consumer reporting agencies, such as by:

1. Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information, such as through an audit;

2. Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

B. Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

C. Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

A. Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

B. Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

C. Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

D. Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to consumer reporting agencies.

E. Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

F. Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

G. Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 41.43(d) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

L. Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, part 222 of title 12, chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 continues to read as follows:

Authority: 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, and

1681w; Secs. 3 and 214, Pub. L. 108–159, 117 Stat. 1952.

2. A new Subpart E is added to part 222 to read as follows:

Subpart E—Duties of Furnishers of Information

Sec.
222.40 Scope.
222.41 Definitions.
222.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.
222.43 Direct disputes.

Subpart E—Duties of Furnishers of Information

§ 222.40 Scope.

Subpart E of this part applies to member banks of the Federal Reserve System (other than national banks) and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*).

§ 222.41 Definitions.

For purposes of this subpart and Appendix E of this part, the following definitions apply:

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

(d) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(e) *Direct dispute* means a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer.

§ 222.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in Appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 222.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer); or

(v) Information related to fraud alerts or active duty alerts; or

(2) The direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraph (c)(2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

(3) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(4) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute may be frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute under this section.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which may notice consist of a standardized form describing the general nature of such information.

3. A new Appendix E is added to part 222 to read as follows:

Appendix E to Part 222—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The Board encourages voluntary furnishing of information to consumer reporting agencies. Section 222.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 222.42(b), the furnisher must consider the guidelines set forth below in developing these policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 222.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The furnisher's policies and procedures should reflect, for example:

1. The types of business activities in which the furnisher engages;

2. The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

3. The technology used by the furnisher to furnish information to consumer reporting agencies.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations;

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship;

5. Ensure that the information it furnishes about accounts or other relationships with a consumer is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is:

(A) Reported with appropriate identifying information about the consumer to whom it pertains;

(B) Reported in a standardized and clearly understandable form and manner; and

(C) Reported with a date specifying the time period to which the information pertains; and

(ii) Substantiated by the furnisher's own records;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; and

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 222.43 and 15 U.S.C. 1681s–2(a)(8).

III. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

A. Identify practices or activities of the furnisher that can compromise the accuracy and integrity of information furnished to consumer reporting agencies, such as by:

1. Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information, such as through an audit;

2. Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

B. Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

C. Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

A. Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

B. Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

C. Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

D. Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to consumer reporting agencies.

E. Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

F. Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

G. Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 222.43(d) of this part from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

L. Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons discussed in the joint preamble, the Federal Deposit Insurance

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations by amending 12 CFR part 334 as follows:

PART 334—FAIR CREDIT REPORTING

1. The authority citation for part 334 is revised to read as follows:

Authority: 12 U.S.C. 1818, 1819 (Tenth), and 1831p–1; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, 1681w, and 6801 *et seq.*; Pub. L. 108–159, 117 Stat. 1952.

2. Add subpart E to part 334 to read as follows:

Subpart E—Duties of Furnishers of Information

Sec.
334.40 Scope.
334.41 Definitions.
334.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.
334.43 Direct disputes.

Subpart E—Duties of Furnishers of Information

§ 334.40 Scope.

This subpart applies to a financial institution or creditor that is an insured state nonmember bank, insured state licensed branch of a foreign bank, or a subsidiary of such entities (except dealers, persons providing insurance, investment companies, and investment advisers).

§ 334.41 Definitions.

For purposes of this subpart and Appendix E of this part, the following definitions apply:

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer that reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

(d) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(e) *Direct dispute* means a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer.

§ 334.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in Appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 334.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters; or

(v) Information related to fraud alerts or active duty alerts; or

(2) The direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraph (c)(2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

(3) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(4) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute may be frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute under this section.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

3. Add Appendix E to part 334 to read as follows:

Appendix E to Part 334—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The FDIC encourages voluntary furnishing of information to consumer reporting agencies. Section 334.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 334.42(b), the furnisher must consider the guidelines set forth below in developing these policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 334.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The furnisher's policies and procedures should reflect, for example:

1. The types of business activities in which the furnisher engages;

2. The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

3. The technology used by the furnisher to furnish information to consumer reporting agencies.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships;

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations;

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship;

5. Ensure that the information it furnishes about accounts or other relationships with a consumer is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to which it pertains, in a standardized and clearly understandable form and manner, with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a furnisher is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is:

(A) Reported with appropriate identifying information about the consumer to whom it pertains;

(B) Reported in a standardized and clearly understandable form and manner; and

(C) Reported with a date specifying the time period to which the information pertains; and

(ii) Substantiated by the furnisher's own records;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; and

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 334.43 and 15 U.S.C. 1681s–2(a)(8).

III. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

A. Identify practices or activities of the furnisher that can compromise the accuracy and integrity of information furnished to consumer reporting agencies, such as by:

1. Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information, such as through an audit;

2. Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

B. Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

C. Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

A. Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

B. Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

C. Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

D. Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to consumer reporting agencies.

E. Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

F. Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

G. Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § _.43(d) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

L. Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency practices, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of Thrift

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Supervision proposes to amend chapter V of title 12 of the Code of Federal Regulations by amending 12 CFR part 571 as follows:

PART 571—FAIR CREDIT REPORTING

1. The authority citation for part 571 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, and 1881–1884; 15 U.S.C. 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, and 1681w; 15 U.S.C. 6801 and 6805; Sec. 214 Pub. L. 108–159, 117 Stat. 1952.

Subpart A—General Provisions

2. Amend § 571.1 by adding a new paragraph (b)(5) to read as follows:

§ 571.1 Purpose and scope.

* * * * *

(b) * * *

(5) The scope of subpart E of this part is stated in § 571.40 of this part.

* * * * *

3. Add a new Subpart E to part 571 to read as follows:

Subpart E—Duties of Furnishers of Information

Sec.
571.40 Scope.
571.41 Definitions.
571.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.
571.43 Direct disputes.

Subpart E—Duties of Furnishers of Information

§ 571.40 Scope.

Subpart C of this part applies to savings associations whose deposits are insured by the Federal Deposit Insurance Corporation or, in accordance with § 559.3(h)(1) of this chapter, federal savings association operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5).

§ 571.41 Definitions.

For purposes of this subpart and Appendix E of this part, the following definitions apply:

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

(d) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(e) *Direct dispute* means a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer.

§ 571.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in Appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 571.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the credit limit on an open-end account, type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer); or

(v) Information related to fraud alerts or active duty alerts; or

(2) The direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraph (c)(2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

(3) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(4) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: A copy of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute may be frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute under this section.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

4. Add a new Appendix E to part 571 to read as follows:

Appendix E to Part 571—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

OTS encourages voluntary furnishing of information to consumer reporting agencies. Section 571.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 571.42(b) of this part, the furnisher must consider the guidelines set forth below in developing these policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 571.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The furnisher's policies and procedures should reflect, for example:

1. The types of business activities in which the furnisher engages;

2. The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

3. The technology used by the furnisher to furnish information to consumer reporting agencies.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations;

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship;

5. Ensure that the information it furnishes about accounts or other relationships with a consumer is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is:

(A) Reported with appropriate identifying information about the consumer to whom it pertains;

(B) Reported in a standardized and clearly understandable form and manner; and

(C) Reported with a date specifying the time period to which the information pertains; and

(ii) Substantiated by the furnisher's own records;

3. Ensure that it conducts reasonable investigations of consumer disputes about

the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; and

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by § 571.43 of this part and 15 U.S.C. 1681s–2(a)(8).

III. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

A. Identify practices or activities of the furnisher that can compromise the accuracy and integrity of information furnished to consumer reporting agencies, such as by:

1. Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information, such as through an audit;

2. Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

B. Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

C. Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

A. Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

B. Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

C. Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

D. Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to consumer reporting agencies.

E. Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

F. Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

G. Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 571.43(d) of this part from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

L. Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

For the reasons discussed in the joint preamble, the National Credit Union Administration proposes to amend chapter VII of title 12 of the Code of Federal Regulations by amending 12 CFR part 717 as follows:

PART 717—FAIR CREDIT REPORTING

1. Revise the authority citation for part 717 to read as follows:

Authority: 12 U.S.C. 1751 *et seq.*; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–1, 1681t, 1681w, 6801 and 6805; Public Law 108–159, 117 Stat. 1952.

2. Add a new subpart E to part 717 to read as follows:

Subpart E—Duties of Furnishers of Information

Sec.
717.40 Scope.
717.41 Definitions.
717.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.
717.43 Direct disputes.

Subpart E—Duties of Furnishers of Information

§ 717.40 Scope.

This subpart applies to a federal credit union that furnishes information to a consumer reporting agency.

§ 717.41 Definitions.

For purposes of this subpart and Appendix E of this part, the following definitions apply:

Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

(d) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(e) *Direct dispute* means a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer.

§ 717.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in Appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 717.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer); or

(v) Information related to fraud alerts or active duty alerts; or

(2) The direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraph (c)(2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

(3) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(4) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute may be frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute under this section.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information.

3. Add a new appendix E to read as follows:

Appendix E to Part 717—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The NCUA encourages voluntary furnishing of information to consumer reporting agencies. Section 717.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 717.42(b), the furnisher must consider the guidelines set forth below in developing these policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 717.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The furnisher's policies and procedures should reflect, for example:

1. The types of business activities in which the furnisher engages;

2. The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

3. The technology used by the furnisher to furnish information to consumer reporting agencies.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations;

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship;

5. Ensure that the information it furnishes about accounts or other relationships with a consumer is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is:

(A) Reported with appropriate identifying information about the consumer to whom it pertains;

(B) Reported in a standardized and clearly understandable form and manner; and

(C) Reported with a date specifying the time period to which the information pertains; and

(ii) Substantiated by the furnisher's own records;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; and

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by 12 CFR 717.43 and 15 U.S.C. 1681s–2(a)(8).

III. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

A. Identify practices or activities of the furnisher that can compromise the accuracy and integrity of information furnished to consumer reporting agencies, such as by:

1. Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information, such as through an audit;

2. Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

B. Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

C. Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

A. Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

B. Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

C. Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

D. Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to consumer reporting agencies.

E. Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

F. Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

G. Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 717.43(d) from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

L. Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies.

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Federal Trade Commission

16 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, the Federal Trade Commission proposes to add part 660 to title 16 of the Code of Federal Regulations as follows:

PART 660—DUTIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES

Sec.
660.1 Scope.
660.2 Definitions.
660.3 Reasonable policies and procedures concerning the accuracy and integrity of furnisher information.
660.4 Direct disputes.
Appendix A to Part 660—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

Authority: 15 U.S.C. 1681s–2(a)(8) and 1681s–2(e); Sec. 312, Pub. L. 108–159, 117 Stat. 1989.

§ 660.1 Scope.

This part applies to furnishers of information to consumer reporting agencies that are subject to administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. 1681s(a)(1)(referred to as ''furnishers'').

§ 660.2 Definitions.

For purposes of this part and Appendix A of this part, the following definitions apply: *Regulatory Definition Approach for Defining ''Accuracy'' and ''Integrity'' Follows:*

(a) *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship.

(b) *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer does not omit any term, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(c) *Furnisher* means an entity other than an individual consumer that furnishes information relating to consumers to one or more consumer reporting agencies. An entity is not a furnisher when it provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA.

(d) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(e) *Direct dispute* means a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer.

§ 660.3 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in Appendix A of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 660.4 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must investigate a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the credit limit on an open-end account, type of account, principal balance, scheduled payment amount on an account, or the amount of the reported credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer); or

(v) Information related to fraud alerts or active duty alerts; or

(2) The direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraph (c)(2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) The name, address, and telephone number of the consumer;

(2) Sufficient information to identify the account or other relationship that is in dispute, such as an account number;

(3) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(4) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute may be frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute under this section.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

Appendix A to Part 660—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The Commission encourages voluntary furnishing of information to consumer reporting agencies. Section 660.3 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 660.3(b) of this part, the furnisher must consider the guidelines set forth below in developing these policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate.

I. Nature, Scope, and Objectives of Policies and Procedures

A. *Nature and Scope.* Section 660.3(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The furnisher's policies and procedures should reflect, for example:

1. The types of business activities in which the furnisher engages;

2. The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

3. The technology used by the furnisher to furnish information to consumer reporting agencies.

Regulatory Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer:

(a) Accurately identifies the appropriate consumer;

(b) Accurately reports the terms of those accounts or other relationships; and

(c) Accurately reports the consumer's performance and other conduct with respect to the account or other relationship with the consumer;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations;

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship;

5. Ensure that the information it furnishes about accounts or other relationships with a consumer is reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is reported with appropriate identifying information about the consumer to whom it pertains, in a standardized and clearly understandable form and manner, and with a date specifying the time period to which the information pertains; and

6. Ensure that the information it furnishes about accounts or other relationships with a consumer is substantiated by the furnisher's own records.

Guidelines Definition Approach for Paragraph B Follows:

B. *Objectives.* A furnisher should have written policies and procedures reasonably designed to accomplish the following objectives:

1. Ensure that the information it furnishes about accounts or other relationships with a consumer is accurate. *Accuracy* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship;

2. Ensure that the information it furnishes about accounts or other relationships with a consumer is furnished with integrity. *Integrity* means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer is:

(i) Reported in a form and manner that is designed to minimize the likelihood that the information, although accurate, may be erroneously reflected in a consumer report, for example, by ensuring that the information is:

(A) Reported with appropriate identifying information about the consumer to whom it pertains;

(B) Reported in a standardized and clearly understandable form and manner; and

(C) Reported with a date specifying the time period to which the information pertains; and

(ii) Substantiated by the furnisher's own records;

3. Ensure that it conducts reasonable investigations of consumer disputes about the accuracy or integrity of information in consumer reports and takes appropriate actions based on the outcome of such investigations; and

4. Ensure that it updates information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including:

(a) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(b) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Accuracy and Integrity Duties of Furnishers Under the FCRA

A furnisher's policies and procedures should address compliance with all applicable requirements imposed on the furnisher under the FCRA, including the duties to: [1]

A. Promptly notify the consumer reporting agency of the furnisher's determination that furnished information is not complete or accurate, for a furnisher that regularly and in the ordinary course of business furnishes information; provide any corrections, or any additional information, that is necessary to make the furnished information complete and accurate; and not thereafter furnish information that remains incomplete or inaccurate. 15 U.S.C. 1681s–2(a)(2).

B. Provide notice of a dispute by a consumer about the accuracy or completeness of information furnished to a consumer reporting agency. 15 U.S.C. 1681s–2(a)(3).

C. Report voluntary closure of a credit account by the consumer in information regularly furnished for the period in which the credit account is closed, for a furnisher that regularly and in the ordinary course of business furnishes information about consumer credit accounts. 15 U.S.C. 1681s–2(a)(4).

D. Notify the consumer reporting agency of the date of delinquency on an account not later than 90 days after the furnisher furnishes information to the consumer reporting agency regarding action taken on the delinquent account (including placement for collection, charge to profit or loss, or any similar action). Date of delinquency means the month and year of the commencement of the delinquency on the account that immediately preceded the action. 15 U.S.C. 1681s–2(a)(5).

E. Have in place reasonable procedures to respond to any notification that the furnisher receives from a consumer reporting agency under section 605B of the FCRA, relating to the blocking of information resulting from identity theft and to prevent the refurnishing of such blocked information. 15 U.S.C. 1681s–2(a)(6)(A).

F. Not furnish to a consumer reporting agency information that purports to relate to the consumer if the consumer submits an identity theft report to the furnisher (at the address specified by that furnisher for receiving such reports) stating that such information maintained by that furnisher resulted from identity theft. (This restriction does not apply if the furnisher subsequently knows or is informed by the consumer that the information is correct.) 15 U.S.C. 1681s–2(a)(6)(B).

G. After receiving a notice of dispute from a consumer reporting agency, in a timely manner: Conduct an investigation; review all relevant information the consumer reporting agency provides; report the results of the investigation to the consumer reporting agency; report incomplete or inaccurate information to all nationwide consumer reporting agencies to which it reported the information; and modify, delete, or permanently block incomplete or inaccurate information or information that cannot be verified. 15 U.S.C. 1681s–2(b).

H. Investigate direct disputes as required by section 660.4 of this part and 15 U.S.C. 1681s–2(a)(8).

III. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

A. Identify practices or activities of the furnisher that can compromise the accuracy and integrity of information furnished to consumer reporting agencies, such as by:

1. Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information, such as through an audit;

2. Reviewing historical records relating to accuracy or integrity or to disputes, or other information relating to the accuracy and integrity of information provided by the furnisher to consumer reporting agencies and the types of errors, omissions, or other problems that may have affected the accuracy and integrity of information it has furnished about consumers to consumer reporting agencies; and

3. Obtaining feedback from consumer reporting agencies, consumers, the furnisher's staff, or other appropriate parties.

B. Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

C. Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

IV. Specific Components of Policies and Procedures

A furnisher's policies and procedures should address the following:

A. Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

B. Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

C. Ensuring that the furnisher maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

D. Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures, verifying random samples, and conducting regular reviews of information provided to consumer reporting agencies.

E. Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

F. Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

G. Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other debts in a manner that prevents re-aging of information, duplicative reporting, or other problems affecting the accuracy or integrity of the information furnished.

H. Attempting to obtain the information listed in § 660.4(d) of this part from a consumer before determining that the consumer's dispute is frivolous or irrelevant.

I. Ensuring that deletions, updates, and corrections furnished to consumer reporting agencies are reflected in business systems to avoid furnishing erroneous information.

J. Conducting investigations of direct disputes in a manner that promotes the efficient resolution of such disputes.

K. Ensuring that technological and other means of communication with consumer reporting agencies are designed to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy and integrity of information contained in consumer reports.

L. Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

M. Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy and integrity of information furnished to consumer reporting agencies.

[1] This is not a complete listing of furnisher duties relating to accuracy and integrity. Furnishers should consult the FCRA to determine what additional duties may apply.

Dated: November 2, 2007.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 28th, 2007.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, the 5th day of November, 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: November 2, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration Board on November 5, 2007.

Mary Rupp,

Secretary of the Board.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–23549 Filed 12–12–07; 8:45 am]

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Federal Register

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December 13, 2007

Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB08

Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure

AGENCY: Employee Benefits Security Administration, DOL.

ACTION: Proposed regulation.

SUMMARY: This document contains a proposed regulation under the Employee Retirement Income Security Act of 1974 (ERISA) that, upon adoption, would require that contracts and arrangements between employee benefit plans and certain providers of services to such plans include provisions that will ensure the disclosure of information to assist plan fiduciaries in assessing the reasonableness of the compensation or fees paid for services that are rendered to the plan and the potential for conflicts of interest that may affect a service provider's performance of services. The proposed regulation will redefine what constitutes a ''reasonable contract or arrangement'' for purposes of the statutory exemption from certain prohibited transaction provisions of ERISA. The regulation, upon adoption, will affect employee benefit plan sponsors and fiduciaries and the service providers to such plans.

DATES: Written comments on the proposed regulation should be received by the Department of Labor on or before February 11, 2008.

ADDRESSES: To facilitate the receipt and processing of comment letters, the Employee Benefits Security Administration (EBSA) encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *http://www.regulations.gov*. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments (preferably at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: 408(b)(2) Amendment, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kristen L. Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

(1) General

In recent years, there have been a number of changes in the way services are provided to employee benefit plans and in the way service providers are compensated. Many of these changes may have improved efficiency and reduced the costs of administrative services and benefits for plans and their participants. However, the complexity of these changes also has made it more difficult for plan sponsors and fiduciaries to understand what the plan actually pays for the specific services rendered and the extent to which compensation arrangements among service providers present potential conflicts of interest that may affect not only administrative costs, but the quality of services provided.

Despite these complexities, section 404(a)(1) of ERISA requires plan fiduciaries, when selecting or monitoring service providers, to act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purposes of providing benefits and defraying reasonable expenses of administering the plan. Fundamental to a fiduciary's ability to discharge these obligations is the availability of information sufficient to enable the fiduciary to make informed decisions about the services, the costs, and the service provider. In this regard, the Department of Labor (Department) has published interpretive guidance concerning the disclosure and other obligations of plan fiduciaries and service providers under ERISA.[1]

In addition to technical guidance, the Department makes available on its Web site various materials intended to assist plan fiduciaries and others in understanding their obligations, the importance of fees, and the assessment of service provider relationships.[2] The Department's Web site also provides a Model Plan Fee Disclosure Form to assist fiduciaries of individual account pension plans when analyzing and comparing the costs associated with selecting service providers and investment products.[3]

Although the Department has issued technical guidance and compliance assistance materials relating to the selection and monitoring of service providers, the Department nevertheless believes that, given plan fiduciaries' need for complete and accurate information about compensation and revenue sharing, both plan fiduciaries and service providers would benefit from regulatory guidance in this area. For this reason, the Department proposes the amendment described below relating to the conditions for a ''reasonable contract or arrangement'' under section 408(b)(2) of ERISA, as set forth in 29 CFR § 2550.408b–2.[4]

(2) The Statutory Exemption for Services

Section 406(a)(1)(C) of ERISA generally prohibits the furnishing of goods, services, or facilities between a plan and a party in interest to the plan. As a result, absent relief, a service relationship between a plan and a service provider would constitute a prohibited transaction, because any person providing services to the plan is defined by ERISA to be a ''party in interest'' to the plan.[5] However, section 408(b)(2) of ERISA exempts certain arrangements between plans and service providers that otherwise would be prohibited transactions under section 406 of ERISA. Specifically, section 408(b)(2) provides relief from ERISA's prohibited transaction rules for service contracts or arrangements between a plan and a party in interest if the contract or arrangement is reasonable, the services are necessary for the establishment or operation of the plan, and no more than reasonable compensation is paid for the services.[6] Regulations issued by the Department clarify each of these conditions to the exemption.[7]

[1] *See, e.g.*, Field Assistance Bulletin 2002–3 (November 5, 2002) and Advisory Opinions 97–16A (May 22, 1997) and 97–15A (May 22, 1997).

[2] *See http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html* and *http://www.dol.gov/ebsa/newsroom/fs053105.html*.

[3] *http://www.dol.gov/ebsa/pdf/401kfefm.pdf*. This model form was developed jointly by the American Bankers Association, the Investment Company Institute, and the American Council of Life Insurers.

[4] The Department also implemented changes to the information required to be reported concerning service provider compensation and compensation arrangements as part of the Form 5500 Annual Report. These changes to Schedule C of the Form 5500 complement the amendment proposed in this Notice in assuring that plan fiduciaries have the information they need to monitor their service providers consistent with their duties under section 404(a)(1) of ERISA. *See* 72 FR 64731.

[5] *See* ERISA § 3(14)(B).

[6] *See* ERISA § 408(b)(2).

[7] *See* 29 CFR § 2550.408b–2.

In this Notice, the Department proposes to amend the regulations under ERISA section 408(b)(2) to clarify the meaning of a ''reasonable'' contract or arrangement. Currently, the regulation at 29 CFR § 2550.408b–2(c) states only that a contract or arrangement is not reasonable unless it permits the plan to terminate without penalty on reasonably short notice.[8] In the amendment described below, the Department proposes to add that, in order for a contract or arrangement for services to be reasonable, it must require that certain information be disclosed by the service provider to the responsible plan fiduciary. The Department believes that in order to satisfy their ERISA obligations, plan fiduciaries need information concerning all compensation to be received by the service provider and any conflicts of interest that may adversely affect the service provider's performance under the contract or arrangement. Accordingly, under the proposal, an arrangement would not be reasonable unless the service provider agrees to furnish, and in fact does furnish, the required information to the responsible plan fiduciary. The ''responsible plan fiduciary'' is the fiduciary with authority to cause the plan to enter into, or extend or renew, a contract or arrangement for the provision of services to the plan.

B. Proposed Amendment to Regulations Under ERISA Section 408(b)(2)

(1) Overview of Proposed Regulation

In general, the proposal amends paragraph (c) of § 2550.408b–2 by moving, without change, the current provisions of paragraph (c) to a newly designated paragraph (c)(2) and adding a new paragraph (c)(1) to address the disclosure requirements applicable to a ''reasonable contract or arrangement.'' The new paragraph (c)(1) of § 2550.408b–2 generally requires that, in order to be reasonable, any contract or arrangement between an employee benefit plan and certain service providers must require the service provider to disclose the compensation it will receive, directly or indirectly, and any conflicts of interest that may arise in connection with its services to the plan.

(a) Scope of the Proposal

Paragraph (c)(1)(i) of the proposal describes the scope of the regulation's disclosure requirements. The Department recognizes that responsible plan fiduciaries may not always need all of the required disclosures from every type of service provider in order to evaluate the reasonableness of the service provider's compensation. Thus, this paragraph limits the proposal's application to contracts or arrangements to provide services by service providers that fall within one or more of three categories. The first category, described in paragraph (c)(1)(i)(A), includes within the scope of the regulation service providers who provide services as a fiduciary under ERISA or under the Investment Advisers Act of 1940. Paragraph (c)(1)(i)(B) includes service providers who provide banking, consulting, custodial, insurance, investment advisory (plan or participants), investment management, recordkeeping, securities or other investment brokerage, or third party administration services, regardless of the type of compensation or fees that they receive. Finally, paragraph (c)(1)(i)(C) includes service providers who receive any indirect compensation in connection with accounting, actuarial, appraisal, auditing, legal, or valuation services.

The Department believes that the compensation arrangements for services provided by the service providers enumerated in paragraphs (c)(1)(i)(A) and (B) are most likely to give rise to conflicts of interest. As to the service providers enumerated in paragraph (c)(1)(i)(C), the Department believes that requiring every service contract or arrangement with these providers to satisfy the requirements of the proposed regulation may not be appropriate or yield helpful information to plan fiduciaries. However, the Department believes that these providers perform some of the most important and potentially influential services to plans and, to the extent these service providers receive indirect compensation in connection with their services, similar conflict of interest concerns would be raised, as with other enumerated service providers.

If a contract or arrangement meets the threshold scope requirement in paragraph (c)(1)(i), then the terms of such contract or arrangement must satisfy the proposal's disclosure requirements in order to be reasonable for purposes of paragraph (c)(1), regardless of the nature of any other services provided or whether the plan is a pension plan, group health plan, or other type of welfare benefit plan. Nevertheless, the proposal's application to contracts or arrangements between plans and the listed categories of service providers should not be construed to imply that responsible plan fiduciaries do not need to obtain and consider appropriate disclosures before contracting with service providers who *do not* fall within these categories. Responsible plan fiduciaries must continue to satisfy their general fiduciary obligations under ERISA with respect to the selection and monitoring of all service providers. Further, contracts or arrangements with these service providers must be ''reasonable'' and otherwise satisfy the requirements of section 408(b)(2) of ERISA.

The proposal also applies only to contracts or arrangements for services to employee benefit plans. The proposed regulation, if adopted, would not apply to contracts or arrangements with entities that are merely providing plan benefits to participants and beneficiaries, rather than providing services to the plan itself. For example, a pharmacy benefit manager that contracts with an employee benefit plan to manage the plan's prescription drug program would be covered as a service provider to the plan providing third party administration or recordkeeping, and possibly consulting, services. However, if a fiduciary contracts on behalf of a welfare plan with a medical provider network, for example an HMO, a doctor that is part of the network and that has no separate agreement or arrangement with the plan would not be a service provider to the plan; the doctor merely provides medical benefits to the plan's participants and beneficiaries.

(b) Disclosure Concerning Compensation and Services

If a contract or arrangement for services falls within the scope of the proposed regulation, the contract or arrangement must comply with paragraphs (c)(1)(ii) through (vi) of the proposal. Paragraph (c)(1)(ii) requires that the contract or arrangement be in writing. The proposal requires specific disclosures and representations from the service provider, and the Department believes they must be made in writing to ensure a meeting of the minds between the service provider and the responsible plan fiduciary.

The proposed regulation next provides in paragraph (c)(1)(iii) that the terms of the contract or arrangement must specifically require the service provider to disclose in writing, to the best of its knowledge, the information set forth in the proposal. The Department believes it is important for the responsible plan fiduciary to obtain assurance from the service provider that it has disclosed complete and accurate information. To ensure that the responsible plan fiduciary has the opportunity to consider all required disclosures before entering into a

[8] *See* 29 CFR § 2550.408b–2(c).

contract or arrangement with a service provider to the plan, the proposal requires that the contract or arrangement include a representation by the service provider that, before the contract or arrangement was entered into, all required information was provided to the responsible plan fiduciary.

The proposal does not prescribe the manner in which such disclosures should be presented to the plan fiduciary, other than requiring a statement by the service provider that the disclosures have been made. All of the required disclosures need not be contained in the same document, as long as all of the required information is presented to the responsible plan fiduciary in writing before such fiduciary enters into the contract or arrangement. Written disclosures may be provided in separate documents from separate sources and may be provided in electronic format, as long as these documents, collectively, contain all of the elements of disclosure required by the regulation. For example, a prospectus required by Federal securities laws, or a Form ADV required to be filed by a registered investment adviser, may include some of the indirect fee or conflict of interest information that a service provider would be required to disclose under this proposal. In these circumstances, the contracting parties are free to incorporate such materials by reference. The Department expects that the service provider will clearly describe these additional materials and explain to the responsible plan fiduciary the information they contain. The Department invites comments on whether, and the extent to which, duplicate disclosures can be avoided, while at the same time ensuring that responsible plan fiduciaries receive comprehensive, straightforward, and helpful information concerning the service provider's compensation and possible conflicts of interest.

The proposal also does not designate any specific time period prior to entering into the contract or arrangement for receipt of the required disclosures, other than requiring a representation by the service provider that all information was provided in writing before the parties entered into the contract. The Department believes it would be incumbent on the service provider to furnish current and accurate information to the plan fiduciary. Further, the responsible plan fiduciary, consistent with its general fiduciary obligations under ERISA, must ensure in its negotiations with a service provider that he or she obtains current and accurate information from the service provider sufficiently in advance of entering into the contract or arrangement to allow the fiduciary to prudently consider the information.

To facilitate the responsible plan fiduciary's determination that the service provider will receive no more than reasonable compensation, paragraph (c)(1)(iii)(A) of the proposal provides that the contract or arrangement must require the service provider to disclose the services to be provided to the plan and all compensation it will receive in connection with the services. A service provider must describe all services that it will provide, regardless of whether such services are described in the proposal's applicable scope provision. For example, if a plan consultant will provide appraisal, legal, and administrative services to the employee benefit plan in addition to its consulting services, then all of these services must be described. The subsections that follow in paragraph (c)(1)(iii)(A)(*1*) through (*4*) of the proposal clarify the requirement that the service provider disclose all compensation or fees that it will receive for its services.

Paragraph (c)(1)(iii)(A)(*1*) broadly defines compensation or fees to include money and any other thing of monetary value received by the service provider or its affiliate in connection with the services provided to the plan or the financial products in which plan assets are invested. Examples of compensation or fees that are covered by this definition include, but are not limited to: gifts, awards, and trips for employees, research, finder's fees, placement fees, commissions or other fees related to investment products, sub-transfer agency fees, shareholder servicing fees, Rule 12b–1 fees, soft dollar payments, float income, fees deducted from investment returns, fees based on a share of gains or appreciation of plan assets, and fees based upon a percentage of the plan's assets. The Department believes that an investment of plan assets or the purchase of insurance is not, in and of itself, compensation to a service provider for purposes of this regulation. However, persons or entities that provide investment management, recordkeeping, participant communication and other services to the plan as a result of an investment of plan assets will be treated as providing services to the plan.

Consistent with recommendations of the ERISA Advisory Council Working Group, the Department concludes that plan fiduciaries must receive more comprehensive information about the compensation or fees involved in plan administration and investments, including indirect compensation.[9] Indirect compensation includes fees that service providers receive from parties other than the plan, the plan sponsor, or the service provider.

Service providers also must disclose compensation or fees received by their affiliates from third parties. For purposes of the proposal, an ''affiliate'' of a service provider is defined in paragraph (c)(1)(iii)(A)(*1*) to be any person directly or indirectly (through one or more intermediaries), controlling, controlled by, or under common control with the service provider, or any officer, director, agent, or employee of, or partner in, the service provider. The Department does not intend this requirement to result in any ''double counting'' of compensation. For instance, an employee's salary or a bonus that is paid to an employee from the general assets of his or her employer (i.e., the service provider) would not need to be separately disclosed, even if the employee is paid in connection with services to an employee benefit plan. The proposal merely clarifies that disclosure of any direct or indirect compensation that otherwise is required under the proposal cannot be avoided merely because such compensation is paid to an employee or agent of the service provider or an affiliate, rather than directly to such service provider or affiliate.

The proposal next provides in paragraph (c)(1)(iii)(A)(*2*) that if a service provider cannot disclose compensation or fees in terms of a specific monetary amount, then the service provider may disclose compensation or fees by using a formula, a percentage of the plan's assets, or a per capita charge for each participant or beneficiary. The Department understands that it is not always possible at the time the parties enter into a service contract or arrangement to know the exact amount of compensation, whether direct or indirect, that the service provider will receive for its services. However, the service provider must describe its compensation or fees in such a way that the responsible plan fiduciary can evaluate its reasonableness. For instance, the service provider must clearly explain any assumptions that would be used in determining the compensation or fees according to any such formula or other charge.

Paragraph (c)(1)(iii)(A)(*3*) of the proposed regulation clarifies the nature of disclosures that must be provided

[9] *See* ERISA Advisory Council Working Group report at *http://www.dol.gov/ebsa/publications.*

concerning bundled arrangements. In many cases, administrative and investment services are provided to employee benefit plans in ''bundled'' arrangements, whereby a package or ''bundle'' of services is provided, either directly or through affiliates or subcontractors of a service provider. These bundles are priced to the plan by a single service provider as a package, rather than on a service-by-service basis. For example, rather than hiring separate service providers for investment management, recordkeeping, Form 5500 annual report preparation, participant communications and statement preparation, payroll processing, and other functions, a plan fiduciary may arrange for one service provider to have all of these services performed as a bundle. The provider of the bundle may in turn use other affiliated service providers, or unaffiliated subcontractors, to provide some of the services in the bundle. However, the responsible plan fiduciary obtains a ''package deal'' and will negotiate only with the provider of the bundle.

Under paragraph (c)(1)(iii)(A)(*3*) of the proposed regulation, if a service provider offers a bundle of services, then a contract or arrangement must require only that the provider of the bundle make the prescribed disclosures. This bundled service provider must disclose information concerning all services to be provided in the bundle, regardless of who provides them. Further, the bundled service provider must disclose the aggregate direct compensation or fees that will be paid for the bundle, as well as all indirect compensation that will be received by the service provider, or its affiliates or subcontractors within the bundle, from third parties. Generally, the bundled provider is not required to break down this aggregate compensation or fees among the individual services comprising the bundle. For instance, the service provider would not have to break down the aggregate fee into the amount that will be charged for preparing the Form 5500 annual report and the amount that will be charged for preparing participant statements. Also, the bundled provider generally is not required to disclose the allocation of revenue sharing or other payments among affiliates or subcontractors within the bundle.

There are, however, exceptions to these rules. Specifically, paragraph (c)(1)(iii)(A)(*3*) requires the bundled provider to disclose separately the compensation or fees of any party providing services under the bundle that receives a separate fee charged directly against the plan's investment reflected in the net value of the investment, such as management fees paid by mutual funds to their investment advisers, float revenue, and other asset-based fees such as 12b–1 distribution fees, wrap fees, and shareholder servicing fees if charged in addition to the investment management fee. Also, paragraph (c)(1)(iii)(A)(*3*) requires the separate disclosure of compensation or fees of any service provider under the bundle that are set on a transaction basis, such as finder's fees, brokerage commissions, or soft dollars. Soft dollars include research or other products or services, other than execution, received from a broker-dealer or other third party in connection with securities transactions. Compensation or fees that are charged on a transaction basis must be separately disclosed even if paid from mutual fund management fees or other similar fees. The Department does not believe that disclosure of these fees would require bundled providers to disclose any revenue sharing arrangements or bookkeeping practices among affiliates that could legitimately be classified as proprietary or confidential. Further, the Department believes that investment-based charges, commissions, and other transaction-based fees paid to affiliates are just as likely to be relevant to the responsible plan fiduciary's evaluation of potential conflicts of interest, whether or not they are part of a bundled service arrangement.

Paragraph (c)(1)(iii)(A)(*4*) requires that the service provider also explain the manner of receipt of compensation, for example whether the service provider will bill the plan, deduct fees directly from plan accounts, or reflect a charge against the plan investment. The description also must explain how any pre-paid fees will be calculated and refunded when the contract or arrangement terminates.

(c) Disclosure Concerning Conflicts of Interest

The subsections that follow in (B) through (F) of paragraph (c)(1)(iii) are intended to inform the responsible plan fiduciary of the service provider's relationships or interests that may raise conflicts of interest for the service provider in its performance of services for the plan. As service arrangements have become more complex, so have the ways that service providers are compensated, as well as the relationships among different players in the plan service provider industry. Plan fiduciaries must know of these relationships and indirect sources of compensation because they may impact the manner in which the provider performs services for the plan. There may be other, oftentimes subtle, influences on the service provider or its affiliates that may be relevant to a plan fiduciary's assessment of the objectivity of a service provider's decisions or recommendations.

The Department's attention to service providers' potential conflicts of interest is not new. For example, in 2005 the Department issued guidance with the Securities and Exchange Commission concerning potential conflicts of interest involved in pension consultant relationships.[10] This guidance provides a list of tips and related explanations to help plan fiduciaries obtain the information necessary to ensure that engagement of the pension consultant serves the best interest of the plan's participants and beneficiaries. The Department believes that the engagement of many plan service providers presents similar issues for the plan fiduciary. Accordingly, under the proposal, a contract or arrangement must require that the service provider disclose specific information that will help the responsible plan fiduciary assess any real or potential conflicts of interest.

Subsection (B) of paragraph (c)(1)(iii) requires that the service provider identify whether it will provide services to the plan as a fiduciary, either as an ERISA fiduciary under section 3(21) of ERISA or as a fiduciary under the Investment Advisers Act of 1940. The Department believes it is important for the responsible plan fiduciary and the service provider to understand at the outset of their relationship whether or not the service provider considers itself a fiduciary and how this status affects the nature of the services to be provided.[11]

Subsection (C) requires that the service provider disclose any financial or other interest in transactions in which the plan will partake in connection with the contract or arrangement. For example, if a service provider will be buying (or advising on the purchase of) a parcel of real estate for the plan, and an affiliate of the service provider owns an interest in the real estate, the service provider will

[10] *See* ''Selecting and Monitoring Pension Consultants—Tips for Plan Fiduciaries'' at *http://www.dol.gov/ebsa/newsroom/fs053105.html.*

[11] The Department notes that persons who perform one or more of the functions described in section 3(21)(A) of ERISA with respect to a plan are fiduciaries. *See* 29 CFR § 2509.75–8. Thus, fiduciary status depends on a factual analysis of a person's activities with respect to a plan. Formal agreements stating whether a person is a fiduciary are not dispositive of whether the person actually is a fiduciary under ERISA by virtue of the functions performed.

have to state that it has an interest in the transaction and describe its affiliate's ownership of the real estate. The responsible plan fiduciary can then weigh the nature and extent of the conflict in analyzing the objectivity of the service provider when making the recommendations.

The proposal also provides that a reasonable contract or arrangement must require the service provider to disclose its relationships with other parties that may give rise to conflicts of interest. Specifically, subsection (D) obligates the service provider to describe any material financial, referral, or other relationship it has with various parties (such as investment professionals, other service providers, or clients) that creates or may create a conflict of interest for the service provider in performing services pursuant to the contract or arrangement. If the relationship between the service provider and this third party is one that a reasonable plan fiduciary would consider to be significant in its evaluation of whether an actual or potential conflict of interest exists, then the service provider must disclose the relationship.

Conflicts also may arise when a service provider can affect its own compensation in connection with its services. Under subsection (E) of the proposal, a contract or arrangement must require the service provider to identify whether it can affect its own compensation without the prior approval of an independent plan fiduciary and to describe the nature of this compensation. A common example of this potential conflict of interest is the receipt of ''float'' compensation.[12] If the amount a service provider receives in float compensation will not be approved by an independent plan fiduciary, then the service provider must state that it will receive float compensation and explain the nature of this compensation.[13]

Finally, the Department recognizes that service providers may have policies or procedures to manage these real or potential conflicts of interest. For example, a fiduciary service provider may have procedures for offsetting fees received from third parties (through revenue sharing or other indirect payment arrangements) against the amount that it otherwise would charge a plan client. Accordingly, subsection (F) of paragraph (c)(1)(iii) of the proposal provides that a reasonable contract or arrangement must require service providers to state whether or not any such policies or procedures exist and, if so, to provide an explanation of these policies or procedures and how they address conflicts of interest. The Department views this requirement as an opportunity for service providers to educate plan fiduciaries about how they address potential conflicts of interest.

(d) Material Changes to Disclosed Information

Paragraph (c)(1)(iv) of the proposal provides that a reasonable contract or arrangement must require that, during the term of the contract or arrangement, service providers must disclose to responsible plan fiduciaries any material changes to the information that is required by paragraph (c)(1)(iii), subsections (A) through (F). Changes on the part of a service provider or its employee benefit plan business may occasionally occur and may alter the information previously disclosed by the service provider. If any resulting change to the information previously disclosed to a plan fiduciary would be viewed by a reasonable plan fiduciary as significantly altering the ''total mix'' of information made available to the fiduciary, or as significantly affecting a reasonable plan fiduciary's decision to hire or retain the service provider, then the change is material. To ensure that plan fiduciaries continue to be well-informed concerning the compensation and conflict of interest issues affecting their service provider relationships, a contract or arrangement must require service providers to notify fiduciaries of material changes within 30 days of the service provider's knowledge of the change.

(e) Reporting and Disclosure Requirements

The proposed regulation under paragraph (c)(1)(v) requires that a reasonable contract or arrangement obligate the service provider to furnish all information related to the contract or arrangement and the service provider's receipt of compensation or fees thereunder that is requested by the responsible plan fiduciary or plan administrator in order to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms, and schedules issued thereunder. For example, this provision would obligate the service provider to furnish information that is necessary for the plan administrator to complete the annual report on Form 5500, and information that is necessary for the responsible plan fiduciary to comply with disclosure obligations to plan participants and beneficiaries.

Of course, detailed reporting concerning some service providers may not be required for annual reporting purposes, for example because the amount or nature of the compensation paid to the service provider does not fall within the threshold or other requirements of the annual report on Form 5500. Further, not all employee benefit plans are subject to the same annual reporting requirements, for example small plans and certain self-funded welfare plans. This does not mean that service providers to these plans would not be required to fully satisfy the disclosure requirements of this proposed regulation, assuming they otherwise fall within the scope of the proposal. The Department anticipates that this proposal would apply more broadly to relationships between service providers and employee benefit plans that are not necessarily covered by ERISA's reporting requirements. The primary goal of this proposal—to provide comprehensive and useful information to responsible plan fiduciaries when entering service contracts or arrangements—is different than that of ERISA's annual reporting and disclosure requirements, which provide more limited retrospective financial information on direct and indirect service provider compensation to facilitate and reinforce the broader fiduciary obligations imposed by this proposal.

(f) Compliance by Service Providers

The proposal's final requirement is contained in paragraph (c)(1)(vi). This condition provides explicitly that a service provider must comply with its obligations under the contract or arrangement as described in the proposed regulation. Not only must a contract or arrangement require disclosure from the service provider, but the service provider must actually provide all of the required disclosures in order for the contract or arrangement to be reasonable. Similarly, it is not enough for a service provider to commit in the written contract to later notify the responsible plan fiduciary of material changes to the disclosures contained in the contract; subsection (vi) requires that the service provider in fact provide such notification.

[12] Many financial service providers, such as banks and trust companies, maintain omnibus accounts to facilitate the transactions of employee benefit plan clients. The service provider may retain earnings (''float'') that result from the anticipated short-term investment of funds held in these accounts. These accounts generally hold contributions and other assets pending investment. Plan fiduciaries also may transfer funds to an omnibus account in connection with issuance of a check to make a plan distribution or other disbursement.

[13] For more information concerning ''float'' compensation and the information concerning such compensation that plan fiduciaries should obtain from service providers, see the Department's Field Assistance Bulletin 2002–3 (Nov. 5, 2002) at *http://www.dol.gov/ebsa/regs/fab_2002–3.html.*

Subsection (vi) also refers to relief that may be available to a responsible plan fiduciary when a service provider fails to comply with this requirement. In addition to this proposed regulation, the Department is publishing a proposed Class Exemption in today's **Federal Register**. Subject to certain conditions, this Class Exemption will provide relief from ERISA's prohibited transaction rules for a responsible plan fiduciary when a contract or arrangement fails to be ''reasonable,'' through no fault of the responsible plan fiduciary, but due to a service provider's failure to satisfy its disclosure obligations under this regulation. The proposed Class Exemption is discussed below in paragraph (2), ''Consequences of Failure to Satisfy the Proposed Regulation.''

(g) Relationship Between Disclosures and the Plan Fiduciary's ERISA Section 404(a) Duties

The parties to a service contract or arrangement that falls within the scope of paragraph (c)(1)(i) of the proposal must, at a minimum, satisfy the requirements contained in this proposal and the other conditions to ERISA section 408(b)(2) in order for the provision of services under the contract or arrangement to be exempt from ERISA's prohibited transaction rules. However, the engagement of any particular service provider will not necessarily satisfy the fiduciary's obligations under section 404(a) of ERISA to act prudently and solely in the best interest of the plan's participants and beneficiaries merely because the service provider furnishes the information described in the proposed regulation.

Section 404(a) of ERISA requires that the responsible plan fiduciary engage in an objective process designed to elicit information necessary to assess not only the reasonableness of the compensation or fees to be paid for services, but also the qualifications of the service provider and the quality of the services that will be provided.[14] Although the steps taken by a responsible plan fiduciary may vary depending on the facts and circumstances, solicitation of bids among service providers is a means by which the responsible plan fiduciary can obtain information relevant to the decision-making process. A responsible plan fiduciary should not consider any one factor, including the fees or compensation to be paid to the service provider, to the exclusion of other factors. Further, a fiduciary need not necessarily select the lowest-cost service provider, so long as the compensation or fees paid to the service provider are determined to be reasonable in light of the particular facts and circumstances.

Further, plan fiduciaries are not limited by the disclosures required in this proposal. Plan fiduciaries may ask service providers for any additional information that they feel is necessary to their decision. For example, a responsible plan fiduciary may have questions for a service provider concerning the specific personnel that will be assigned to manage or perform services under the contract or arrangement.

Finally, although this proposal looks to disclosures made at the time a service contract or arrangement is entered into or renewed, responsible plan fiduciaries must continue to monitor service arrangements and the performance of service providers. Receipt of the disclosures described in this proposed regulation at the onset of a service relationship will not relieve plan fiduciaries of this ongoing obligation.

(h) Existing Requirement Concerning Termination of Contract or Arrangement

Paragraph (c)(2) of the regulation continues to require that service contracts or arrangements permit termination by the plan without penalty and on reasonably short notice. This requirement has not been changed, though the Department invites comments from the public as to any practical issues relating to the current regulation's requirements concerning contract termination. Specifically, the Department would like to know whether the current regulatory framework presents practical problems and whether further regulatory or interpretive guidance could address these problems.

(i) Other Statutory Exemptions Concerning Service Providers

The Department understands that, in certain circumstances, plans and service providers to such plans must rely on statutory exemptions other than section 408(b)(2) of ERISA in order to conduct business without violating ERISA's prohibited transaction provisions. Therefore, the Department invites comment on the extent to which the application of the disclosure requirements contained in this proposed regulation will affect, or may be affected by, other ERISA statutory exemptions that may relate to plan service arrangements.

(2) Consequences of Failure To Satisfy the Proposed Regulation

If the contract or arrangement fails to require disclosure of the information described in the proposed regulation, or if the service provider fails to disclose such information, then the contract or arrangement will not be ''reasonable.'' Therefore, the service arrangement will not qualify for the relief from ERISA's prohibited transaction rules provided by section 408(b)(2). The resulting prohibited transaction would have consequences for both the responsible plan fiduciary and the service provider. The responsible plan fiduciary, by participating in the prohibited transaction, will have violated section 406(a)(1)(C) of ERISA's prohibited transaction rules.[15] The service provider, as a ''disqualified person'' under the Internal Revenue Code's (Code) prohibited transaction rules, will be subject to the excise taxes that result from the service provider's participation in a prohibited transaction under Code section 4975.[16]

The Department believes that this significant result will provide incentives for all parties to service contracts or arrangements to cooperate in exchanging the disclosures required by the proposed regulation. However, the Department also believes that, in certain circumstances, a responsible plan fiduciary should not be held liable for a prohibited transaction that results when a service provider, unbeknownst to the plan fiduciary, fails to satisfy its disclosure obligations as required by the proposed regulation. Accordingly, the Department also published a proposed Class Exemption in today's **Federal Register**. The scope of the relief provided by the Class Exemption and the conditions that must be satisfied by a responsible plan fiduciary in order to obtain such relief are discussed in the preamble to the proposed Class Exemption. The Department notes that, in general, the parties seeking to avail themselves of either the statutory exemption provided by ERISA section 408(b)(2), or the administrative exemption provided in the Department's proposed Class Exemption, will bear the burden of establishing compliance with the conditions of these exemptions.

[14] *See, e.g.*, Information Letters to D. Ceresi (Feb. 19, 1998) and to T. Konshak (Dec. 1, 1997).

[15] *See* ERISA § 406(a)(1)(C).

[16] The Internal Revenue Code (Code) also provides statutory relief for transactions between a plan and a service provider that otherwise would be prohibited. Any excise taxes imposed by Code section 4975(a) and (b) for failure to satisfy the statutory exemption are paid by the disqualified person who participates in the prohibited transaction, in this case the service provider, not the plan fiduciary. *See* Code § 4975(a), (b), (c)(1)(C), (d)(2), and (e)(2)(B).

C. Effective Date

The Department proposes that its amendments to regulation section 2550.408b–2(c) be effective 90 days after publication of the final regulation in the **Federal Register**. The Department invites comments on whether the final regulation should be made effective on a different date.

D. Request for Comments

The Department invites comments from interested persons on the proposed regulation and other issues discussed in this Notice. Comments should be submitted electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *http://www.regulations.gov*. Persons wishing to submit paper copies should address them to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: 408(b)(2) Amendment. All comments received will be available for public inspection, without charge, at *http://www.regulations.gov* or at *http://www.dol.gov/ebsa* and in the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

The comment period for this proposed regulation will end 60 days after publication of the proposed rule in the **Federal Register**. The Department believes that this period of time will afford interested persons an adequate amount of time to analyze the proposal and submit comments.

E. Regulatory Impact Analysis

(1) Overview of the Proposal

Under section 406(a)(1)(C) of ERISA's prohibited transaction rules, the furnishing of goods, services, or facilities between a plan and a party in interest to the plan is generally prohibited.[17] A service relationship between a plan and a service provider would thus constitute a prohibited transaction in the absence of regulatory relief, because ERISA defines any person providing services to the plan as a ''party in interest'' to the plan.[18] Section 408(b)(2) of ERISA, however, exempts certain arrangements between plans and service providers that otherwise would be prohibited transactions. To obtain relief under that section, the arrangement must be reasonable, the services must be necessary for the establishment or operation of the plan, and no more than reasonable compensation must be paid for the services.[19] Regulations issued by the Department clarify each of these conditions to the exemption.[20]

To further clarify the meaning of a ''reasonable'' contract or arrangement under section 408(b)(2), the Department proposes to amend the regulation at 29 CFR § 2550.408b–2(c). Under the proposal, a contract or arrangement to provide covered services to a plan would not be reasonable unless it requires the service provider to disclose, in writing, certain information before the contract or arrangement is entered into, extended, or renewed. The Department believes that, in order to satisfy their ERISA obligations, plan fiduciaries need information concerning all compensation to be received by the service provider and any conflicts of interest that may adversely affect the service provider's performance of the contract or arrangement.

The proposal requires that, in order to be considered a reasonable contract or arrangement, the contract must require the service provider to furnish the specified information to the responsible plan fiduciary. The rule also would require that the service provider comply with its contractual obligation and actually furnish the specified information. These disclosures are intended to enable the responsible plan fiduciary to ensure that no more than reasonable compensation is paid to the service provider for the services and to illustrate any actual or potential conflicts of interest that may affect the service provider's judgment.

Once adopted, these requirements will apply to all contracts or arrangements between plans (including pension plans, group health plans, and other types of welfare benefit plans) and service providers who are fiduciaries; who provide banking, consulting, custodial, insurance, investment advisory, investment management, recordkeeping, securities or other investment brokerage, or third party administration services; or who receive indirect compensation for accounting, actuarial, appraisal, auditing, legal, or valuation services to the plan (collectively ''covered services'' or ''covered providers'').

The Department's interest in this proposal stems from concerns about the fees paid for by employee benefit plans, and the ability of plan sponsors and fiduciaries to understand these fees which may be paid directly or indirectly by plans. The Department believes that greater understanding of these fees by the affected parties will increase efficiency and competition in the service provider market and generate benefits to plans and thus to plan participants. Although the Department believes this rule will have the greatest effect on service providers to pension plans, the Department identified other employee benefit plans, such as health and welfare plans, that would be affected by this regulation and could realize benefits from the proposal similar to the benefits realized by pension plans.

In a separate regulatory effort, the Department has revised Schedule C of the annual Form 5500, which is filed by most large plans. Schedule C collects information about plan service providers that were compensated in excess of $5,000. These revisions are intended to improve the reported information on compensation and revenue sharing arrangements of service providers to employee benefit plans. Similar to the proposed revisions under section 408(b)(2) of ERISA, the revisions to Schedule C are intended to help plan sponsors and fiduciaries in determining the reasonableness of the fees they pay to service providers and to help assess any potential conflicts of interest. While the proposed regulation under section 408(b)(2) of ERISA concerns the disclosure of information during the decision-making process, the changes to Schedule C concern the provision of retrospective information as part of a plan's annual reporting obligations.

The Department is also publishing, simultaneously with this regulatory initiative, a proposed class exemption for plan fiduciaries in certain circumstances when plan service arrangements fail to comply with ERISA section 408(b)(2). The exemption is published elsewhere in this issue of the **Federal Register**. In the preamble to the exemption, the Department describes how it has taken into account the availability of conditional relief under the exemption in assessing the economic costs and benefits of the regulation. The Department believes that the exemption is essential to achieve the purposes underlying the regulation.

(2) Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is

[17] *See* ERISA § 406(a)(1)(C).

[18] *See* ERISA § 3(14)(B).

[19] *See* ERISA § 408(b)(2).

[20] *See* 29 CFR 2550.408b–2.

likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(1) because it is likely to materially affect a sector of the economy. Accordingly, the Department has undertaken, as described below, an analysis of the costs and benefits of the proposed regulation in satisfaction of the requirements of the Executive Order. The Department believes that the proposed regulation's benefits justify its costs.

(3) Need for Regulatory Action

Employee benefit plans have evolved over the past several years, resulting in changes to both the services provided to the plans and the compensation received by service providers. Fee structures for service providers have, in some cases, become more complex and less transparent for plan sponsors or fiduciaries determining what is actually paid for services. This increased complexity also makes it more difficult to discern the service provider's potential conflicts of interest. It has also become more difficult to determine the impacts of these potential conflicts of interest on the fees paid by, or the quality of the services provided to, the plan.

Despite these complexities, when selecting or monitoring service providers, plan fiduciaries must act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. To meet these obligations, it is vital that fiduciaries have enough information to make informed assessments and decisions about the services, the costs and the providers. In this regard, the Department has published interpretive guidance concerning the disclosure and other obligations of plan fiduciaries and service providers under sections 404, 406(b) and 408(b) of ERISA.[21]

To the extent that plan fiduciaries are unable to obtain this information, or unable to use it to choose among service providers in a manner that upholds their fiduciary duty, a failure exists in the market for services for employee benefit plans. This market failure results from information asymmetry between the providers of plan services who possess information about their fee structures and potential conflicts of interest and plan fiduciaries that lack this information but need it to act in the best interest of their plans. The Department believes that both responsible plan fiduciaries and service providers will benefit from this proposed regulation, which will promote the efficiency of plan fiduciaries finding and using the information they need to search for service providers. This action furthers important public policy goals of increased transparency and increased competition in the service provider market.

(4) Regulatory Alternatives

Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives. The Department considered the following alternatives: Remaining with the status quo, a general regulatory framework, broad applicability, and a specific framework with limited application. These alternatives are described further below:

• Remain with status quo

The Department weighed the option of remaining with the status quo and relying on the current regulatory framework. ERISA's existing fiduciary duties imposed by sections 404 and 408(b)(2) already require plan fiduciaries to ensure that fees paid to service providers are reasonable. As part of this duty, fiduciaries must obtain information about fees and conflicts of interest. Absent a regulation, the status quo framework relies upon these more general fiduciary requirements to ensure that plans pay reasonable service fees.

The status quo alternative was rejected. Although the Department has issued technical guidance concerning plan fiduciaries' obligations to assess all compensation received by service providers, issues remain concerning the adequacy of current disclosures made to plans. The Department believes that plan fiduciaries would benefit from a clear and uniform regulatory standard for disclosure. Additionally, under the ''status quo'' alternative, it is unclear whether non-fiduciary service providers are obligated by law to provide the information the Department believes fiduciaries need in order to evaluate whether a provider's fees are reasonable.

• General regulatory framework

Second, the Department considered establishing a general regulatory framework requiring service providers to furnish, and plan fiduciaries to obtain, information on fee structures and conflicts of interest. This alternative would not have specified in detail the exact information that must be exchanged, but would have left this up to the parties to the contract or arrangement. The Department rejected this alternative because it believes both responsible plan fiduciaries and service providers would benefit from additional guidance concerning the information that must be exchanged. The Department felt that, although this alternative would create an obligation on the part of the parties to exchange information that relates to the reasonableness of fees, parties may be left with ongoing ambiguity about exactly what information is necessary to fully evaluate a service provider contract or arrangement. The Department therefore believes that this alternative would fail to generate significant benefits in the form of greater efficiency with higher costs than the status quo.

• Broad applicability

Third, the Department considered applying the proposed regulation broadly to all service arrangements that rely on the section 408(b)(2) service provider exemption for relief from ERISA's prohibited transaction rules. Upon further consideration, this alternative was rejected because the Department believed that the proposal's written disclosure requirements should be targeted to a more specifically defined group of service providers. The Department believes that certain service arrangements generally do not involve complex compensation arrangements or conflicts of interest, and therefore need not be separately regulated in order to ensure that compensation information is disclosed. Benefits from this alternative and the proposed rule would be similar and benefits would be accruing primarily to those plans with complex service provider arrangements. This alternative would be more costly than the proposed framework as more service providers would be affected.

• Specific framework with limited application

Lastly, the Department considered, and ultimately has adopted as its

[21] *See, e.g.* Field Assistance Bulletin 2002–3 (Nov. 5, 2002) and Advisory Opinions 97–16A (May 22, 1997) and 97–15A (May 22, 1997).

proposal, a rule requiring that, in order to be reasonable, a contract or arrangement for services must mandate that certain sets of service providers disclose specified information about their compensation and conflicts of interest. The proposal covers typical plan service providers that are most likely to have complex compensation arrangements or conflicts of interest. They include: fiduciary service providers; providers furnishing banking, consulting, custodial, insurance, investment advisory or management, recordkeeping, securities or other investment brokerage, or third party administration services; or providers who receive indirect compensation for accounting, actuarial, appraisal, auditing, legal or valuation services. The Department believes this framework will yield the information that plan fiduciaries need in order to assess the reasonableness of compensation paid for services from these service providers. Absent the regulation, such information may be difficult to obtain. The Department believes that the proposed rule provides the largest benefit among the four alternatives, while also limiting the costs.

(5) Characterization of Affected Entities

(a) Interaction of Affected Entities

The Department considered the costs and benefits of the proposed regulation over a 10-year time frame beginning in 2008. The proposed regulation will apply to all contracts or arrangements between plan fiduciaries and service providers that fall within its scope. The Department believes that other entities also may be affected either directly or indirectly by the proposal, including plan participants and plan sponsors. Using data from plan year 2003 submissions of Form 5500 and Schedule C, the Department developed a detailed industry profile to obtain information on these entities and their growth over the analysis period. The industry profile also describes the interactions among these entities and the influence of the proposed regulation on these interactions.[22]

(b) Growth of Affected Entities Over Time

To estimate the costs of the rule in future years, it is necessary to project the growth of the affected entities. To estimate this growth, the Department calculated a growth rate from past data on pension plans and participants. This growth rate was used to project the numbers of potentially affected entities in future years out to 2020. In the absence of more specific information, the Department assumed a growth in pension plans and participants equal to that of the labor force and the economy. The estimated growth rate was thus based on industry-wide trends in pension plans and participants.

The Department used data from 1985 to 2005 on numbers of defined benefit (DB) and defined contribution (DC) plans.[23] Since 1985, there has been a dramatic increase in the number of 401(k) plans, while other DC and DB plans show a marked decrease. Overall, there are slight increases in the total number of plans and participants. These increases are driven by the growth of 401(k) plans.

The Department estimated a growth rate model based on fitting an exponential curve function through the data points. This growth rate model was then used to predict future numbers of plans and participants. The results showed steady increases in the total number of plans (from about 800,000 in 2010 to 850,000 in 2020) and participants (from around 81,800,000 in 2010 to 90,800,000 in 2020) for the years 2010 through 2020.

(c) Quantitative Characterization of Affected Entities

The Department undertook a quantitative characterization of the benefit plan industry to gain additional information on the entities the Department believes would be affected by the rule. This subset of employer-sponsored plans was used for this characterization due to the availability of data on these types of plans. Data from plan year 2003 submissions of Form 5500, a yearly filing required for many benefit plans, were used for this analysis. The general approach of this characterization was to look at the two major plan types, pension (defined benefit and defined contribution) and welfare, and, where appropriate, subcategories within each plan type.

For plan year 2003, there were around 762,000 benefit plans for which a Form 5500 was filed, 676,000 of which were pension plans and roughly 86,000 of which were welfare plans. This population of benefit plans can be divided into large plans (≥100 participants) and small plans (<100 participants), according to the filing instructions for Form 5500. For plan year 2003, there were nearly 153,000 large plans and nearly 610,000 small plans. Thus, most employee benefit plans have fewer than 100 participants.

The Department made a rough characterization of the plan sponsor population using data collected via Form 5500. For all plans filed that year, there were over 622,000 plan sponsors, with about 86 percent of sponsors having only one benefit plan. Among plans filed for 2003, there were nearly 79,000 sponsors of large plans and over 555,000 sponsors of small plans. The Department believes, however, that these numbers might be slightly overestimated due to some plan sponsors filing under more than one employer identification number.

The Department characterized data for service providers to benefit plans from Schedule C submissions for plan year 2003. Compared to plan sponsor data, the data on service providers was very limited, as only a subset of plans must file Schedule C. For example, data for services and service providers to small plans, which account for over 80 percent of all plans, are not represented in the Schedule C filings. In terms of the number of service providers per plan, almost three quarters (72 percent) of the plans listed using one or two service providers, and 95 percent of the plans used 10 or less service providers. Only 14 plans used 40 or more unique service providers.

The Department also characterized the number of affected services provided by plan type and size (based on the number of participants) for all plans that filed Schedule C for plan year 2003, or the number of plan-provider arrangements. There were nearly 55,000 affected plan-provider arrangements for pension plans, and nearly 31,000 affected plan-provider arrangements for welfare plans. This analysis resulted in an estimate of the number of affected service providers to pension plans as nearly 9,878, and to welfare plans as 7,519, for a total number of about 15,600 affected service providers (providers that service both markets are counted only once). Although this analysis only covered a subset of the service provider market, the Department believes that this analysis included most of the affected service providers. Additional characterizations of service providers in terms of the services provided and compensation received are presented in Technical Appendix A to the 408(b)(2) Regulatory Impact Analysis.

The Department characterized benefit plan participants from Form 5500 submissions for plan year 2003. This analysis showed roughly 151.8 million pension plan participants and 162.7 million welfare plan participants. The totals for pension plans and welfare

[22] See Technical Appendix A to the 408(b)(2) Regulatory Impact Analysis, which is available as part of the public docket associated with this regulation, for details.

[23] Investment Company Institute, *401(k) Plans: A 25-Year Retrospective (Dec. 2006) at 3.*

plans may overlap, as individuals may participate in more than one type of plan.

(6) Benefits

As an example of the kind of benefits that could arise from this rule, the Department considered the possible benefits to defined contribution pension plans. The Department considered these benefits of the proposal from a qualitative perspective due to the ambiguous nature of the benefits arising from the proposal and the difficulty of quantifying them. Primary benefits of the proposal were thought to result from the potential for reduced unit costs incurred by plans for fiduciaries to search for service providers. This potential reduced unit cost of searching would encourage plan fiduciaries to obtain information from a larger set of service providers when they were making decisions about which provider to engage. Additionally, fiduciaries would have fewer barriers to changing service providers if they were not happy with their current fees or the returns they were receiving.

The social benefits arising from the proposal would be the sum of three different possible categories of primary benefits: possible lower fees paid by plans, possible increased efficiency due to reduced conflicts of interest, and possible higher returns due to reduced unit search costs incurred by plans. The magnitude of these benefits would depend in part on the degree to which the proposal actually resulted in lower search costs, and the degree to which different kinds of inefficiency currently exist in the market for service providers. A graphical analysis of these primary benefits is provided in Technical Appendix A to the 408(b)(2) Regulatory Impact Analysis which shows how the proposal lowers the marginal search costs for plans and how this cost reduction results in a greater amount of searching effort performed at a lower cost. The graphical analysis also shows the total net benefits to plans from the increased search effort by fiduciaries and the total societal net benefits of the reduction in unit search costs for service providers.

In addition to the potential primary benefits of the proposal, the Department identified potential secondary benefits due to possible higher rates of investment by participants in defined contribution pension plans. These secondary benefits could potentially arise from increased plan efficiencies and better investment choices by plan fiduciaries, and possibly from increases in plan participants' confidence in their plans as well. With greater transparency of fee structures, plan participants may have increased levels of confidence in their plans and may feel that their investment opportunities are more attractive. This increased confidence and attractiveness of investments could in turn result in a higher rate of investment in plans by plan participants. The existence and magnitude of these secondary benefits would depend on the preferences of employees in trading current for future consumption. Possible increases in rates of investment would be a benefit to society if the rate of return on capital investment were greater than the social rate of time preference between current and future consumption. Both of these issues are covered in Technical Appendix B to the 408(b)(2) Regulatory Impact Analysis.

(7) Costs

The Department estimated costs for the proposal over the 10-year time frame for the analysis. The primary costs of the rule are seen to accrue to service providers.[24] The Department used information from the quantitative characterization of the service provider market presented above as a basis for these cost estimates. This characterization did not account for all service providers, but did provide information on the segments of the service provider industry that are likely to be most affected by the proposal (*i.e.*, those who service pension plans). In addition to the costs to service providers, the Department also considered other potential costs and savings from the proposal, including savings to plan participants and costs to the plan due to its fiduciaries' review of any additional material they receive as part of the required disclosures.

(a) Costs to Service Providers

(i) *Initial costs.* When the Department publishes the proposal, affected service providers will need to evaluate whether their current disclosure practices comply with the proposal and, if not, how their practices must be changed to be compliant. The Department projected this as a cost incurred in the year in which the rule takes effect.

The Department assumed that all affected service providers will incur a cost for rule familiarization, and estimated this cost to be one hour per service provider. The Department assumed that the rule familiarization would be performed by an in-house professional-level employee at a cost of $56 per hour.[25] Using the number of unique service providers identified in the quantitative analysis presented earlier (15,600), this cost was estimated to be about $870,000 (15,600 × 1 × $56).

Although all affected service providers are assumed to incur these initial costs, it is more likely that only service providers with complex fee arrangements and conflicts of interest would find a formal review process to be necessary. The Department assumed that the number of service providers undertaking this kind of formal review is similar to the number of unique service providers who are reported on the Schedule C as having received $1 million or more in compensation (2,100). Assuming that 24 working hours would be required to read the proposal, review a service provider's current disclosure practices, and describe needed changes, if any, the initial cost of legal review is around $5.4 million (2,100 service providers × 24 hours × $106 in-house lawyer rate).

Affected service providers must also develop or update their current disclosure statements. This activity includes developing formulae and algorithms to estimate direct and indirect compensation that will be applied in a pro forma projection for each plan with which the provider will contract. The Department again assumed that the majority of this cost would be incurred by service providers in the first year of the analysis period. The existing amount of disclosure supplied by many service providers is likely to be adequate for compliance with the new rule. For example, a service provider offering unbundled trustee services or unbundled participant communications services is likely to stipulate a single direct payment that is already being adequately disclosed in the absence of the new rule. For this calculation, the Department assumed that the number of unique service providers reported on the Schedule C as having received $1 million or more in compensation (2,100) is a reasonable proxy for the number of service providers that will need to update their current disclosure statements. The Department assumed that 80 working hours would be required to implement changes to disclosure statements, producing a cost of about $9.4 million (2,100 service providers × 80 hours × $56 in-house professional rate).

[24] Costs to service providers might be ultimately borne by plans and their participants.

[25] The hourly wage estimates used in this analysis are estimates for 2007 and are based on data from the Bureau of Labor Statistics National Occupational Employment Survey (May 2005) and the Bureau of Labor Statistics Employment Cost Index (Sept. 2006).

(ii) *Recurring costs.*

In addition to the initial costs identified above, the Department estimated the burden for two recurring costs that would accrue during each subsequent year of the analysis period. The first recurring cost was for service providers entering the market (either for the first time or by re-entry) to provide service to plans after the first year of applicability. These firms incur the initial cost of rule familiarization. The Department has assumed that one-twelfth (1,300 = 15,600 × 1/12) of all service providers are new in each year subsequent to the first.[26] Familiarization costs then equal around $73,000 (1,300 service providers × 1 hour × $56 in-house professional rate).

The second recurring cost arises from affected service providers needing to develop the written disclosure statement each time the ''contracts and arrangements entered into,'' are ''extended, or renewed.'' Many contracts between plans and service providers have multi-year terms, automatic annual renewals, or no specific term (having instead a provision for either party to terminate at will).[27] Despite these longer contract terms, though, even these contract types are likely to include, at least annually, material changes to elements such as unit costs. The Department thus estimated one disclosure per year per contract between a plan and service provider.[28] Service providers may provide similar written disclosures as plan administrators ask for multiple bids for a single service or as plan administrators ask for costs for multiple investment or service options from a single provider. These additional written disclosures are not strictly subject to the proposal because they are not directly related to a transaction. For this reason, these additional disclosures were not included in the estimated costs of the rule.

Exhibit 7–1 presents an estimate of the number of contracts using Form 5500 data from plan year 2003. The projection assumes that those who are not Schedule C filers have as many providers on average as Schedule C filers. Firms such as insurance companies that may be service providers for purposes of the proposal may have been reported on Schedule A. These firms are not included in this estimate.

EXHIBIT 7–1.—NUMBER OF DISCLOSURES PER YEAR

Type and number of participants	Number of plans	Schedule C filers	Affected schedule C filers	Affected provider-plan arrangements	Affected providers per plan	Affected service provider arrangements (projected)
Pension (DB, DC) <100 participants	596,641	526	444	613	1.38	823,741
Pension (DB, DC) 100–499 participants	57,961	16,680	15,289	18,846	1.23	71,446
Pension (DB, DC) 500–1,000 participants	8,958	4,774	4,488	7,470	1.66	14,910
Pension (DB, DC) >1,000 participants	12,427	8,478	8,077	28,255	3.50	43,472
All Pension (DB, DC)	675,987	30,458	28,298	55,227		953,569
Welfare <100 participants	13,095	801	738	913	1.24	16,200
Welfare 100–499 participants	46,224	7,366	6,736	8,811	1.31	60,463
Welfare 500–1,000 participants	10,475	2,558	2,377	4,286	1.80	18,888
Welfare >1,000 participants	16,670	5,075	4,780	16,946	3.55	59,098
All Welfare	86,464	15,800	14,631	31,025		154,649
All Plans	762,451	46,258	42,929	86,692		1,108,218

The Department assumed that many written disclosure statements under the proposal could be made routine and automatic. In the absence of good data on the number of easily automated versus not easily automated disclosure statements, the Department estimated that 70 percent are easy and would not require any significant time to produce, and 30 percent are complex, requiring 1 hour and 40 minutes to produce. The weighted average for the time needed is therefore 0.5 hours per written disclosure, yielding a recurring contracting disclosure cost of around $31 million (1,108,000 disclosures × 0.5 hours × $56 in-house professional rate). The Department invites the public to comment on these assumptions.

A summary of the initial and recurring labor costs is shown below in Exhibit 7–2.

EXHIBIT 7–2.—SUMMARY OF INITIAL AND RECURRING LABOR COSTS

	Affected quantity (2003 data)	Hours	Labor rate (2007$s)	Total (2007$s)
Initial Cost 1 (First Year)	15,609	1	$56	$874,104
Initial Cost 2 (First Year)	2,101	24	106	5,344,944
Initial Cost 3 (First Year)	2,101	80	56	9,412,480

[26] Industry growth, and therefore the growth in the number of service providers over time, has been addressed in Exhibit 7–4. For example, in 2009 the Department has assumed that there are 12% more service providers than in 2003.

[27] Please note that 29 CFR 2550.408b–2(c) provides, in part, that a contract or arrangement for services must be terminable, on reasonably short notice, by a plan.

[28] These recurring costs are assumed to accrue every year, starting with the first year.

EXHIBIT 7–2.—SUMMARY OF INITIAL AND RECURRING LABOR COSTS—Continued

	Affected quantity (2003 data)	Hours	Labor rate (2007$s)	Total (2007$s)
Subtotal Initial Cost				15,631,528
Recurring Cost 1 (Subsequent Years)	1, 300	1	56	72,800
Recurring Cost 2 (All Years)	1,108,218	0.5	56	31,030,104

Lastly, the Department estimated annual materials costs attributable to the disclosures required under the proposal. The Department's proposal does not provide detailed guidance on the format of the disclosure. However, the Department previously made available on its Web site (*http://www.dol.gov/ebsa*) a Model Fee Disclosure Form developed in cooperation with industry representatives that reflects similar types of information and runs to 11 pages. The disclosures are thus assumed to add 11 pages to existing written materials in each year. Paper and printing costs are estimated at $0.05 per page. The Department assumed that there would be no significant additional postage costs because the disclosures, in most cases, could be included with other written materials given to the plan before the contract is entered into. [Total material costs are therefore roughly $609,500 ($0.05 per page × 11 additional pages × 1,108,000 disclosures).]

This materials cost was then added to the initial and recurring costs to estimate the total costs of the rule. These calculations are summarized below in Exhibit 7–3.

EXHIBIT 7–3.—SUMMARY OF TOTAL INITIAL AND RECURRING COSTS BY YEAR

	Labor costs	Materials costs	Total costs
First Year: Initial Costs	$15,631,528		
First Year: Recurring Costs 2	31,030,104	$609,520	
First Year: Cost Total	46,661,632	609,520	47,271,152
Subsequent Years: Recurring Costs 1	72,800		
Subsequent Years: Recurring Costs 2	31,030,104	609,520	
Subsequent Years: Cost Total	31,102,904	609,520	31,712,424

Exhibit 7–4 below shows the projection of costs over the 10-year time horizon for the proposal. The number of service providers is expected to grow above the number projected from plan year 2003 Form 5500 data. In order to quantify the increase in affected service providers over time, the Department has used 1997 and 2002 Economic Census data from the U.S. Census Bureau. The growth in ''Portfolio Managers'' (NAICS 523920) between the 1997 and 2002 Economic Census represents a compound annual growth rate of 3.8 percent and was utilized for this analysis as an approximation of the growth rate for all affected service providers. The Department applied a conservative growth rate of half that historical value, 1.9 percent, to the plan year 2003 Form 5500 data. A real discount rate of 7 percent, as recommended in OMB Circulars A–94 and A–4, was applied to the ten-year stream of costs to obtain an estimate of the net present value of the costs. The 7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The analysis is relatively insensitive to the value of the discount rate. Since the benefits of the proposal are not quantified, this net present value of the costs is also equal to the Department's estimate of the quantified net costs of the rule.

EXHIBIT 7–4.—CALCULATION OF NET PRESENT VALUE

Year	Real 2007 dollars	Growth in service providers from 2003	Real 2007 constant dollars with growth	Discount factor	Discounted 2007 dollars
2008	$47,271,152	1.099	$51,950,996	0.935	$48,574,181
2009	31,712,424	1.120	35,517,915	0.873	31,007,140
2010	31,712,424	1.141	36,183,876	0.816	29,526,043
2011	31,712,424	1.163	36,881,549	0.763	28,140,622
2012	31,712,424	1.185	37,579,222	0.713	26,793,986
2013	31,712,424	1.207	38,276,896	0.666	25,492,413
2014	31,712,424	1.230	39,006,282	0.623	24,300,913
2015	31,712,424	1.253	39,735,667	0.582	23,126,158
2016	31,712,424	1.277	40,496,765	0.544	22,030,240
2017	31,712,424	1.301	41,257,864	0.508	20, 958,995
Total					279,950,691

(b) Cost Savings for Plan Participants

The proposal may allow fiduciaries to make even better choices among offers from competing service providers and among options offered by any service provider. Since the fiduciary makes these choices in the best interest of the participants and beneficiaries, cost savings generally accrue to the plan and thus plan participants. The Department cannot directly quantify the amount of savings. The Department can, however, calculate a threshold value for the point at which the cost savings equal the costs identified above.

Because the largest costs to plans generally are investment management costs, it is useful to express the threshold in terms of a percent against assets. Total assets held in private defined benefit and defined contribution plans in 2005 were $4.9 trillion.[29] If more than 8 percent of plans realize expense reductions of 1 basis point (one one-hundredth of a percent), then cost savings will exceed costs. The Department assumes that at least 8 percent of plans will experience a reduction of at least 1 basis point. Therefore, cost savings are expected to exceed costs. These results are summarized below in Exhibit 7–5. The Department invites the public to comment on these assumptions.

EXHIBIT 7–5.—CALCULATION OF THRESHOLD VALUE AT WHICH COST SAVINGS EQUAL COSTS

A	Annuity Equivalent to $280.0 M	$39,858,680
B	Total Assets	$4,861,000,000,000
C	Assets × 1 basis point	$486,100,000
D = A/C	Threshold Percent of Firms	8%

(c) Costs to Plans

Plan fiduciaries already have a fiduciary duty to evaluate the reasonableness of offers from service providers, and they already have access to tools like the Model Plan Fee Disclosure Form to assist them in asking service providers questions in order to encourage disclosure. The proposed changes to the Department's regulation under section 408(b)(2) of the Act attempt to facilitate this duty by providing a framework as to what must be disclosed concerning service arrangements and by requiring service providers to provide such disclosures in order to benefit from the section 408(b)(2) statutory exemption.

On the other hand, some plans may incur costs under the proposal. First, the new written disclosures are likely to become longer and more detailed than what fiduciaries are currently receiving. The prudent fiduciary may spend additional hours reviewing the longer written disclosure document, resulting in costs to their plan. In addition, some fiduciaries may be concerned that the availability of the detailed written disclosures exposes them to potential fiduciary liability. Fiduciaries could go so far as to hire outside consultants to review and evaluate the new written disclosures, which would again result in costs to their plans.

On the whole, the Department projects that the amount of time saved by fiduciaries in gathering data is offset by the additional time spent by them in reviewing additional data. These potential costs to plans were thus not included in the estimates. The amount of time spent by fiduciaries is likely to be similar with or without the proposal, though: As was previously discussed in the benefits section, the time spent under the proposal evaluating and documenting fees as reasonable is likely to be more efficient than in the baseline.

(8) Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis (IRFA) at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

In response to this request, the Department prepared an IRFA of the proposal because, although the Department considers it unlikely that the rule will have a significant effect on a substantial number of small entities, the Department does not have enough information to certify to that effect.

(a) Reasons for and Objectives of the Proposal

Employee benefit plans have evolved over the past several years, resulting in service providers having more complex compensation arrangements and conflicts of interest. Thus, plan fiduciaries face greater difficulty in assessing whether the compensation paid to their service providers is reasonable. This proposal is intended to help plan fiduciaries get the information they need to negotiate with and select service providers who offer high quality services at reasonable rates.

The reasons for and objectives of this proposed regulation are discussed in detail in Section A of this preamble, ''Background,'' and in section 3 of the Regulatory Impact Analysis (RIA), ''Need for Regulatory Action.'' The legal basis for the proposal is set forth in the ''Authority'' section of this preamble, below.

(b) Estimating Compliance Requirements for Small Entities

The Department estimated the number of small entities that would be required to make disclosures under the proposal by examining 2002 Economic Census data for industries in North American Industry Classification System (NAICS) codes for activities affected by the proposal. Next, the Department used information on firms in the affected NAICS codes to estimate the population of affected firms. From this analysis, the Department estimated that about 14,600 small firms would incur costs under the proposal. Further detail on this estimation procedure is provided in Technical Appendix C to the 408(b)(2) Regulatory Impact Analysis.

To determine the impact of the rule on small entities, the Department examined the initial and recurring costs that would be borne by small firms in further detail. As discussed in Section 7, the initial costs are estimated to amount to $56 for every small entity for rule

[29] Investment Company Institute, *401(k) Plans: A 25-Year Retrospective (Dec. 2006) at 3.*

familiarization, and roughly $7,000 for more in-depth review and changes to disclosure practices for small entities at the larger end of the range, or those with over $1,000,000 in annual revenues. These costs, which are at most less than one percent of a single year's revenues, should be easily affordable for all small entities.

The impact of recurring costs will depend on the number of plans served by each firm, and the fraction of plans requiring complex disclosures. In an attempt to determine the numbers of plans served by small service providers relative to large ones, the Department examined data from Form 5500 filings for plan year 2003. These data showed a strong tendency for smaller service providers (measured in terms of the total number of participants served) to serve plans of smaller average size. The Department found that, if all plans with 5 or fewer participants are served by the smallest of the service providers, it is possible that up around 5,150 small entities could face costs equal to one percent of revenues. Comparing this maximum to the total number of small entities bearing costs under this rule (about 14,600), or roughly one third of affected small entities could possibly bear ongoing costs equal to one percent of revenues as a result of the proposal. Because these magnitudes are above the thresholds commonly used to measure impacts on small entities, the Department considered it inappropriate to certify that the rule would not cause a ''significant impact on a substantial number of small entities.''

In conclusion, the Department believes that the rule is very likely to result in costs that are insignificant in comparison to revenues for all but the smallest affected entities. This conclusion, however, is subject to considerable uncertainty, due largely to a lack of data on both small plans and small service providers. The Department believes that it is at least possible for a substantial number of small entities to bear costs that could be considered significant, and therefore, the Department examined the issue in detail. Additional detail on the Department's analysis of this issue can be found in Technical Appendix C to the 408(b)(2) Regulatory Impact Analysis.

(c) Considered Alternatives

In accordance with the RFA, the Department considered whether several alternatives to the proposed regulation would minimize the economic impact on affected small entities. The Department also considered the anticipated benefits of the proposal for these entities. These alternatives are described further below, followed by a discussion of the Department's chosen alternative.

(i) *Exemption for Small Entities.*

The Department considered exempting from the requirements of the proposed regulation small service providers with a threshold of $6.5 million in annual revenue. The threshold of $6.5 million follows from the Small Business Administration's definition of small firms.[30] An exemption may lessen the burden on small service providers, to the extent such small service providers are not already providing written disclosures that would comply with the requirements of the proposed regulation. The Department believes, however, that such an exemption would not comport with the rule's objectives of providing plan fiduciaries with the information they need to assess the reasonableness of service fees. There is no indication that small service providers are any less likely to have complex fee arrangements or conflicts of interest. Instead, the Department has determined that the likely existence of complex fee structures and conflicts of interest depends more on the nature of the service provided than upon the size of the service provider. Accordingly, the Department has narrowed the proposal's scope to providers of a limited set of services, such as investment advice and management.

The Department believes that small providers and the plans they serve will benefit from the proposal, because it will clarify the information that must be disclosed to responsible plan fiduciaries.

(ii) *Delaying Implementation for Small Service Providers.*

The Department also considered delaying implementation of the proposal for small service providers and small plans. This delay would provide these parties with more time to become familiar with the disclosure requirements, over a period of up to two years beyond the rule's generally applicable effective date. However, similar to the Department's rationale for deciding not to provide an exemption for small entities, the Department believes that plans, large and small, contracting with small service providers need the information required by the proposal in order to determine the reasonableness of service provider fees. Further, the Department does not believe there is any benefit to delaying application of this proposal, because doing so would delay the benefits to all plans of the proposal's required disclosures. Failure to obtain such information could cause plans to pay too much for services.

(iii) *Benefits of the Proposal to Small Plans.*

The Department believes that small plans will benefit significantly from the proposal. Fiduciaries to small plans may sometimes have trouble obtaining complete disclosures from potential service providers. Because the proposal is conditioned on compliance by both responsible plan fiduciaries and service providers, the Department believes that it will assist small plan fiduciaries in obtaining the information they need to make informed decisions when selecting service providers. Additionally, responsible plan fiduciaries for plans, both large and small, will benefit from the clarity that the proposal provides concerning the specific information that the Department believes is relevant to these decisions.

(d) The Selected Alternative

The Department considered and selected a disclosure framework that outlines what disclosures must be included in a ''reasonable'' contract or arrangement. As indicated above, small plans will benefit from this increased information at least as much as large plans will. Because there is no standard form for the disclosure, small service providers with relatively simple compensation arrangements and few, if any, conflicts of interest can provide a relatively simple, short written disclosure. The Department also limited the application of the rule to certain classes of services providers, as discussed above in the ''Scope'' section of the preamble. By limiting the scope of the regulation to contracts or arrangements with service providers that are more likely to have complicated fee structures and conflicts of interest, the Department believes that the proposal will avoid unnecessary burdens on small service providers that will not be subject to its written disclosure requirements.

(e) Duplicative, Overlapping, and Conflicting Rules

The Department identified two rules that potentially overlap or duplicate the proposal: Changes to the Form 5500,

[30] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' Available online at: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* For further discussion please see the Technical Appendix Section C which can be accessed at the Department's Web site at *www.dol.gov/ebsa.*

Schedule C, and The Investment Advisers Act of 1940.

(i) *Changes to the Form 5500, Schedule C.*

Recent changes to the Form 5500, Schedule C, clarify the requirements for the reporting of direct and indirect compensation received by service providers. Also, Schedule C requires that the source and nature of compensation in excess of $1,000 received from parties other than the plan or the plan sponsor be disclosed for certain key service providers.

Both the revised Schedule C requirements and the proposal aim to make indirect compensation received by service providers more transparent. The proposal, however, requires disclosure of compensation and fees in advance of contract performance so that the fiduciary can assess their reasonableness before they are paid. The Form 5500 revisions, on the other hand, require disclosure of actual compensation and fees after contract performance.

Small plans need not file the Schedule C, so the rule does not overlap for over 90 percent of plans. In addition, because small plans may tend to use small service providers, the existing relief for small plans from filing the Schedule C also minimizes the burden on small service providers.

(ii) *The Investment Advisers Act of 1940.*

The Investment Adviser's Act of 1940 authorizes the U.S. Securities Exchange Commission (SEC) to regulate investment advisors. The SEC requires SEC-registered investment advisers to disclose compensation and conflicts of interest to clients using the SEC Form ADV.

Some of the information disclosed on Form ADV may be similar to disclosures required by this proposal, which also will elicit information about indirect compensation and conflicts of interest. However, the Department clarifies above in the preamble that parties may satisfy the proposal's disclosure requirements by incorporating other written materials. This flexibility is afforded to parties in order to avoid unnecessary duplication. Thus, the Form ADV may serve as part of the disclosure made by service providers to comply with the proposal. Further, many of the service providers covered by the proposal are not subject to the Investment Advisers Act.

(f) Congressional Review Act Statement

This notice of proposed rulemaking is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

(g) Unfunded Mandates Reform Act Statement

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the notice of proposed rulemaking does not include any federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increased expenditures by the private sector of more than $100 million, adjusted for inflation.

(9) Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the Proposed Rule on Reasonable Contract or Arrangement Under Section 408(b)(2). A copy of the ICR may be obtained by contacting the person listed in the PRA Addressee section below. The Department has submitted a copy of the proposal to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques, e.g., by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through February 11, 2008, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration. Please note that comments submitted to OMB are a matter of the public record.

PRA Addressee: Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. ICRs submitted to OMB are also available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

(a) The Proposal

The ICRs are contained in paragraph (c)(1)(iii) of the proposal and pertain to the written disclosure requirements that the service provider must make whenever a contract or arrangement is entered into, extended, or renewed as a condition to the relief provided by the proposal. The written disclosure must include a description of the specific services to be provided, the direct and indirect compensation or fees to be received by the service provider, and the manner of receipt of such compensation or fees. It must also include a statement concerning whether the service provider will provide any services to the plan as a fiduciary and statements about the potential for conflicts of interest.

The Department estimates that about 15,600 affected service providers would need to review the rule and their current disclosure practices in the first year. The Department assumed that the rule familiarization would require one hour and be performed by an in-house professional-level employee at a cost of $56 per hour.

In years subsequent to the first year of applicability, the Department estimates that providers newly entering the market for plan services will need to become familiar with the rule. One-twelfth (around 1,300) of all service

providers are assumed to be new to the market for plan services in each year subsequent to the first.[31] The Department again assumed that the rule familiarization would take one hour and would be performed by an in-house professional-level employee at a cost of $56 per hour.

The Department assumed that 2,100 affected service providers would have more complex fee arrangements and would therefore need to undertake a more formal review of their disclosure practices in the first year. The Department assumed that this formal review would require 24 working hours and be performed by an in-house lawyer at an estimated cost of $106 per hour. The Department assumed that the same affected providers (2,100) would also need to update templates and processes for disclosure in the first year. This update is assumed to require 80 working hours and be performed by a in-house profession-level employee at a cost of $56 per hour, as described above.

The Department estimates that 1,108,000 contracts or arrangements exist between service providers and plans and that each contract or arrangement will require a written disclosure. It is assumed that contracts or arrangements are either entered into or renewed once in each of the first three years after the regulation would become effective. Preparation and delivery of the required disclosure is assumed to add, on average, one half hour to the process of entering into a contract or arrangement. Preparation and delivery are assumed to be performed by an in-house professional-level employee at a cost of $56 per hour. The average annual burden hours across the first three years is therefore estimated as 633,000 hours. The equivalent cost for this burden hour estimate is about $36,290,000 per year.

In addition to burden hours, the Department has estimated annual materials costs attributable to the disclosure. The Department's proposal does not provide detailed guidance on the content or format of the disclosure. However, the Department makes available a model 401(k) plan fee disclosure form that represents similar types of information and runs to 11 pages. The disclosures are assumed to add 11 pages to existing written contracts in each year. Paper and printing costs were estimated at $0.05 per page. It is assumed that there are no postage costs because, in most cases, the disclosures simply add content to what would generally be a written contract even absent the proposal. For each of the first three years, materials costs are therefore estimated to be roughly $609,500 (1,108,000 disclosures × 11 pages × $0.05 per page cost).

(b) The Proposed Class Exemption

Not only does the proposal provide that the terms of the service contract must require the service provider to disclose its compensation and conflicts of interest, the service provider must also comply with the contract on an on-going basis and actually disclose this information in writing to the responsible plan fiduciary. If the service provider fails to disclose the data, then the provision of services will constitute a prohibited transaction under ERISA section 406(a)(1)(C) because it will not be considered a ''reasonable contract or arrangement'' exempted by ERISA section 408(b)(2). Therefore, in such instances, the responsible plan fiduciary will have violated section 406(a)(1)(C) even if it made every effort to comply with the proposed regulation by entering into, or extending or renewing, a written contract that required such disclosures. The failure to make the required disclosures also would result in a prohibited transaction by the service provider under section 4975(c)(1)(C) of the Internal Revenue Code.

Therefore, as an accompaniment to the proposed regulation, the Department also proposes a Class Exemption that will relieve such fiduciaries from liability for a prohibited transaction under ERISA section 406(a)(1)(C) in cases where the contract or arrangement requires the specified disclosures but the service provider fails to make them. This proposed Class Exemption is published in today's **Federal Register**.

The ICR contained in the proposed exemption requires that the responsible plan fiduciary, upon discovering a service provider's failure to make the required disclosures, must submit a written request to the provider for all information that the provider should have disclosed. It also requires the responsible plan fiduciary to report a service provider's refusal or failure to comply with the request in certain situations. As discussed below, the Department has determined that this ICR imposes a small paperwork burden on responsible plan fiduciaries in addition to the ICR imposed by the proposal.

To estimate this burden, the Department started with the number of disclosures made in the first year of the analysis (1,108,000) and assumed that 10 percent (111,000) of these disclosures would result in a concern by the responsible plan fiduciary after the contract or arrangement was solidified. According to the requirements of the exemption, the responsible plan fiduciary must, upon discovering a failure to disclose, submit a written request to the service provider for all information that it should have disclosed. The Department thus assumed that 111,000 written requests to service providers would be made for additional disclosure in the first year of the analysis. The Department assumed that the number of written requests would decrease in future years as service providers became more accustomed to the new disclosure requirements. Thus, in years two and three of the analysis, it was assumed that only five percent (about 55,500) of the total number of disclosures would be questioned. The Department averaged the number of exemption related requests over three years to obtain an average annual total of roughly 74,000 written disclosures.

Upon receipt of the written request by the responsible plan fiduciary, the service provider then has 90 days to comply with the request. If the service provider fails or refuses to comply with the responsible plan fiduciary's request in this timeframe, the exemption requires the responsible fiduciary to notify the Department of the service provider's failure or refusal. The Department estimates the number of notifications they would expect to receive as ten percent of the total number of written requests received by service providers, or nearly 11,000 the first year and 5,500 in the two succeeding years. Averaging this number of notifications over the three years resulted in an annual number of notifications of around 7,400.

The Department next estimated the total annual hour burden for the additional tasks required of plan fiduciaries under the exemption. The Department assumed that the written request to service providers would take a half hour of a fiduciary's time, resulting in a total annual hour burden of about 37,000 hours (74,000 requests × 0.5 hours). The Department next assumed that a notification to the Department of a service provider's failure or refusal to comply with a written request by the responsible fiduciary would take one hour of the responsible fiduciary's time, resulting in a total annual hour burden of 7,400 (7,400 × 1 hour). Summing the burden of these two tasks resulted in a total annual hour burden estimate for plan fiduciaries of roughly 44,000 hours. The

[31] Industry growth, and therefore the growth in the number of service providers over time, has been addressed in Exhibit 7–4. For example, in 2009 the Department has assumed that there are 12% more service providers than in 2003.

equivalent costs of these annual burden hours are about $2,070,000 ($56 in-house professional labor rate × 37,000 hours) and $783,000 ($106 in-house lawyer rate × 7,400 hours) for a total equivalent cost of around $2,850,000.

In addition to burden hours, the Department has estimated annual materials costs for plan fiduciaries to comply with the requirements of the exemption. Paper and printing costs are estimated at $0.05 per page. The Department assumed that both requests to service providers and notifications to the Department would be two pages. Since 81,300 of these requests and notifications are expected annually, the annual material cost is about $8,100 (81,300 × $0.05 × 2), plus an annual postage cost of $33,300 (83,100 × $0.41), totaling around $41,400.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection (Request for new OMB control number).

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure.

OMB Control Number: 1210–New.

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 79,500.

Estimated Number of Responses: 1,189,000.

Frequency of Response: Annually; occasionally.

Estimated Average Annual Burden Hours: 677,000.

Estimated Average Annual Burden Cost: $651,000.

F. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects 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. The proposed regulation would not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated that are not pertinent here, that the provisions of Titles I and IV of ERISA supersede State laws that relate to any employee benefit plan covered by ERISA. The requirements implemented in the proposed regulation do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, the Department proposes to amend Chapter XXV, subchapter F, part 2550 of Title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

2. Section 2550.408b–2(c) is revised to read as follows:

§ 2550.408b–2 General statutory exemption for services or office space.

* * * * *

(c) *Reasonable contract or arrangement*—(1) *Disclosure concerning contract or arrangement.* (i) No contract or arrangement to provide services to an employee benefit plan, nor any extension or renewal of such contract or arrangement, by:

(A) A service provider who provides or may provide any services to the plan pursuant to the contract or arrangement as a fiduciary either within the meaning of section 3(21) of the Act or under the Investment Advisers Act of 1940;

(B) A service provider who provides or may provide any one or more of the following services to the plan pursuant to the contract or arrangement: banking, consulting, custodial, insurance, investment advisory (plan or participants), investment management, recordkeeping, securities or other investment brokerage, or third party administration; or

(C) A service provider who receives or may receive indirect compensation or fees, as described in paragraph (c)(1)(iii)(A)(*1*) of this section, in connection with providing any one or more of the following services to the plan pursuant to the contract or arrangement: accounting, actuarial, appraisal, auditing, legal, or valuation; is reasonable within the meaning of section 408(b)(2) of the Act and Sec. 2550.408b–2(a)(2) unless the requirements of paragraphs (c)(1)(ii) through (vi) of this section are satisfied.

(ii) The terms of the contract or arrangement shall be in writing.

(iii) The terms of the contract or arrangement (including any extension or renewal of such contract or arrangement) shall require the service provider to disclose in writing, to the best of the service provider's knowledge, the information set forth in this paragraph (c)(1)(iii) and shall include a representation by the service provider that, before the contract or arrangement was entered into (or extended or renewed), all such information was provided to the fiduciary with authority to cause the employee benefit plan to enter into (or extend or renew) the contract or arrangement (the ''responsible plan fiduciary''):

(A) All services to be provided to the plan pursuant to the contract or arrangement and, with respect to each such service, the compensation or fees to be received by the service provider, and the manner of receipt of such compensation or fees. For purposes of this paragraph (c)(1)(iii):

(*1*) ''Compensation or fees'' include money or any other thing of monetary value (for example, gifts, awards, and trips) received, or to be received, directly from the plan or plan sponsor or indirectly (i.e., from any source other than the plan, the plan sponsor, or the service provider) by the service provider or its affiliate in connection with the services to be provided pursuant to the contract or arrangement or because of the service provider's or affiliate's position with the plan. An ''affiliate'' of a service provider is any person directly or indirectly (through one or more intermediaries) controlling, controlled by, or under common control with the

service provider, or any officer, director, agent, or employee of, or partner with, the service provider.

(*2*) Compensation or fees may be expressed in terms of a monetary amount, formula, percentage of the plan's assets, or per capita charge for each participant or beneficiary of the plan. The manner in which compensation or fees are expressed shall contain sufficient information to enable the responsible plan fiduciary to evaluate the reasonableness of such compensation or fees.

(*3*) If a service provider offers a bundle of services to the plan that is priced as a package, rather than on a service-by-service basis, then only the service provider offering the bundle of services must provide the disclosures required by this paragraph (c)(1). The service provider must disclose all services and the aggregate compensation or fees to be received, directly or indirectly, by the service provider, any affiliate or subcontractor of such service provider, or any other party in connection with the bundle of services. The service provider shall not be required to disclose the allocation of such compensation or fees among its affiliates, subcontractors, or other parties, except to the extent such party receives or may receive compensation or fees that are a separate charge directly against the plan's investment reflected in the net value of the investment or that are set on a transaction basis, such as finder's fees, brokerage commissions, and soft dollars (research or other products or services other than execution in connection with securities transactions).

(*4*) A description of the manner of receipt of compensation or fees shall state whether the service provider will bill the plan, deduct fees directly from plan accounts, or reflect a charge against the plan investment and shall describe how any prepaid fees will be calculated and refunded when a contract or arrangement terminates.

(B) Whether the service provider (or an affiliate) will provide any services to the plan as a fiduciary either within the meaning of section 3(21) of the Act or under the Investment Advisers Act of 1940,

(C) Whether the service provider (or an affiliate) expects to participate in, or otherwise acquire a financial or other interest in, any transaction to be entered into by the plan in connection with the contract or arrangement and, if so, a description of the transaction and the service provider's participation or interest therein,

(D) Whether the service provider (or an affiliate) has any material financial, referral, or other relationship or arrangement with a money manager, broker, other client of the service provider, other service provider to the plan, or any other entity that creates or may create a conflict of interest for the service provider in performing services pursuant to the contract or arrangement and, if so, a description of such relationship or arrangement,

(E) Whether the service provider (or an affiliate) will be able to affect its own compensation or fees, from whatever source, without the prior approval of an independent plan fiduciary, in connection with the provision of services pursuant to the contract or arrangement (for example, as a result of incentive, performance-based, float, or other contingent compensation) and, if so, a description of the nature of such compensation, and

(F) Whether the service provider (or an affiliate) has any policies or procedures that address actual or potential conflicts of interest or that are designed to prevent either the compensation or fees described in paragraph (c)(1)(iii)(A) of this section or the relationships or arrangements described in paragraph (c)(1)(iii)(C), (D), and (E) of this section from adversely affecting the provision of services to the plan pursuant to the contract or arrangement, and, if so, an explanation of these policies or procedures and how they address such conflicts of interest or prevent an adverse effect on the provision of services.

(iv) The terms of the contract or arrangement shall require that the service provider must disclose to the responsible plan fiduciary any material change to the information required to be disclosed in paragraph (c)(1)(iii) of this section not later than 30 days from the date on which the service provider acquires knowledge of the material change.

(v) The terms of the contract or arrangement shall require that the service provider must disclose all information related to the contract or arrangement and any compensation or fees received thereunder that is requested by the responsible plan fiduciary or plan administrator in order to comply with the reporting and disclosure requirements of Title I of the Act and the regulations, forms, and schedules issued thereunder.

(vi) The service provider shall comply with its disclosure obligations under the contract or arrangement as described in this paragraph (c)(1). Prohibited Transaction Class Exemption 2008-XX will provide relief for a responsible plan fiduciary from the prohibitions of section 406(a)(1)(C) of the Act as a result of a service provider's failure to comply with this paragraph (c)(1)(vi).

(2) *Termination of contract or arrangement.* No contract or arrangement is reasonable within the meaning of section 408(b)(2) of the Act and Sec. 2550.408b–2(a)(2) if it does not permit termination by the plan without penalty to the plan on reasonably short notice under the circumstances to prevent the plan from becoming locked into an arrangement that has become disadvantageous. A long-term lease which may be terminated prior to its expiration (without penalty to the plan) on reasonably short notice under the circumstances is not generally an unreasonable arrangement merely because of its long term. A provision in a contract or other arrangement which reasonably compensates the service provider or lessor for loss upon early termination of the contract, arrangement, or lease is not a penalty. For example, a minimal fee in a service contract which is charged to allow recoupment of reasonable start-up costs is not a penalty. Similarly, a provision in a lease for a termination fee that covers reasonably foreseeable expenses related to the vacancy and reletting of the office space upon early termination of the lease is not a penalty. Such a provision does not reasonably compensate for loss if it provides for payment in excess of actual loss or if it fails to require mitigation of damages.

* * * * *

Signed at Washington, DC, this 7th day of December, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–24064 Filed 12–12–07; 8:45 am]

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Federal Register

Thursday,
December 13, 2007

Part IV

Department of Housing and Urban Development

24 CFR Part 598

Empowerment Zones: Performance Standards for Utilization of Grant Funds; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 598

[Docket No. FR–4853–F–02]

RIN 2506–AC16

Empowerment Zones: Performance Standards for Utilization of Grant Funds

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes certain planning and performance standards for utilization of grant funds allocated to Empowerment Zones, including planning and performance standards for benefit levels and economic development activities. The standards are designed to ensure that activities undertaken with HUD Empowerment Zone grant funds are consistent with the strategic plans of the Empowerment Zones. This final rule follows publication of a proposed rule, takes into consideration the public comments received on the proposed rule, and makes certain changes in response to public comment.

DATES: *Effective Date:* January 14, 2008.

FOR FURTHER INFORMATION CONTACT: Lorraine H. Drolet, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–6339 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—June 8, 2005 Proposed Rule

On June 8, 2005 (70 FR 33641), HUD published a proposed rule that would amend its regulations at 24 CFR part 598 to add a new subpart G entitled ''Empowerment Zone Grants.'' New subpart G was proposed to be added to establish (1) the requirements for preparation and submission of an implementation plan for the use of funds appropriated by Congress and made available by HUD specifically for the Round II urban Empowerment Zones (EZs), and (2) performance standards that the EZs must meet in the use of those funds. The June 8, 2005, rule proposed to require an EZ to submit to HUD a plan for use of HUD EZ grant funds. These plans would be subject to performance and economic development standards in order to ensure that grant funds are expended in ways that are consistent with the EZ's strategic plan as well as ensure that a certain level of the benefits resulting from the expenditures of these funds accrue to persons who reside within the EZ.

The June 8, 2005, proposed rule was prompted, in part, by numerous comments received by HUD on the subject of utilization of funds for the benefit of EZ residents following HUD's issuance of a policy statement on resident benefit in July 2002. Round I EZs received Social Service Block Grants (SSBG) from the Department of Health and Human Services (HHS). The HHS statute governing the use of SSBG funding, (42 U.S.C. 1397 *et seq.*), states in relevant part that, ''an area shall use the grant for activities that benefit residents of the area for which the grant is made.'' Round II EZs received grant funds from HUD (HUD EZ grant funds) rather than SSBG funds.

This funding distinction created a situation where there is an explicit statutory basis for a resident benefit standard for Round I EZs, but not for Round II EZs. Nevertheless, HUD determined that it was appropriate to establish a performance standard that strives to ensure a certain level of resident benefit is achieved from the use of HUD EZ grant funds. The establishment of such a standard is supported by and consistent with the fact that several of the tax incentives that are the primary benefits for businesses operating in EZs also provide a direct benefit to EZ residents.

Therefore, to enhance achievement of the objectives of an EZ strategic plan and the specific objective of benefiting EZ residents, this rule requires each EZ to submit an implementation plan for HUD approval for each project or activity to be undertaken with HUD EZ grant funds that is proposed by the EZ after the effective date of this rule. The implementation plan is to describe the EZ's planned use of HUD EZ grant funds, and what percentage of the funds specifically will meet the principal benefit standard. The three performance standards are stated as (1) a principal benefit standard, (2) a proportional benefit standard, and (3) an exception criterion for determining the amount of HUD EZ grant funds that may be used to fund a particular project or activity described in an implementation plan. Each of these standards was discussed in detail in the preamble to the June 8, 2005, proposed rule, and a brief summary of each standard is provided in this preamble.

A. Performance Standards

1. Principal Benefit Standard

The principal benefit standard is based on the percentage of the total number of persons projected to benefit from the assisted activity who reside within the boundaries of the EZ. This standard recognizes that for most projects it is not feasible to entirely limit the persons who benefit directly from EZ activities to those who reside within the EZ. The rule therefore establishes a minimum percentage of persons who must benefit in order to determine that EZ residents principally benefit from EZ activities.

The rule provides that an EZ may use HUD EZ grant funds to assist any project that provides at least 51 percent of its direct benefits to persons who reside within the designated EZ boundaries. Moreover, in any case where the direct benefits to be provided by the project in question will be in the form of jobs, the project may be assisted if at least 35 percent of the jobs, on a full-time equivalent basis, are taken by, or made available to, EZ residents.

The emphasis on the benefits to be received by EZ residents derives from HUD's determination that such an emphasis is needed to make the main goal of the EZ program more likely to be achieved. That goal is the long-term, sustainable revitalization of a highly impoverished area. In the case of an EZ, which by definition includes a very high percentage of persons in poverty, this means that many such persons must find a way to raise their income. HUD also recognizes that there may be projects that would be helpful to the overall effort to revitalize an EZ but which cannot meet either of the two proposed resident benefit tests (that is, the 51 percent or 35 percent tests), and therefore the rule provides two other standards to determine resident benefit.

2. Proportional Benefit Standard

In the interest of providing maximum flexibility to an EZ in its effort to achieve the goals of its strategic plan, the June 8, 2005, rule also proposed to establish a proportional benefit standard to assist such an activity to a lesser degree. This standard provides that while a project that will meet either the 51 percent or 35 percent test, as applicable, may be fully assisted with HUD EZ grant funds, a project that cannot meet those tests may nevertheless be eligible for assistance with HUD EZ grant funds.

The level of assistance that may be provided to such projects will be limited so that the percentage of assistance does not exceed the

percentage of EZ residents that are expected to directly benefit from the assisted activity. This standard embodies a practical approach that allows the use of the HUD EZ grant funds at a level commensurate with the extent to which EZ residents will benefit directly from such a project.

The principal benefit standard provides an incentive to EZs to fund projects that will provide at least 51 percent (or 35 percent, where applicable) of the direct benefits to EZ residents because where these percentages are met, there is no limit as to the allowable percentage of HUD EZ grant funding in a project. However, if a project is highly desirable for other reasons, under the proportional benefit standard, the project may still be assisted, in part, using HUD EZ grant funds.

3. Exception Criterion

In any case where a proposed project does not meet the principal benefit standard or the proportional benefit standard, the June 8, 2005, proposed rule advised that HUD would consider a request for exception if an EZ concludes that the project would contribute to its strategic plan in a critical way. The proposed rule provided that where an EZ demonstrates, to HUD's satisfaction, other substantial benefits to the EZ that would result from the project, or other compelling reasons justifying the appropriateness of the implementation plan to its strategic plan, HUD may approve the project notwithstanding inability to meet either the principal or proportional benefit standards.

The proposed rule provides that all requests for exceptions to the two standards must be in writing, accompanied by a statement or narrative that provides the factual information that justifies an exception.

B. Additional Issues

In addition to the three performance standards, the preamble to the June 8, 2005, proposed rule also addressed the following issues, for which this preamble also provides a brief summary for the convenience of the reader.

1. *Amount of benefit.* The question of how much benefit, at minimum, should be derived from the expenditure of HUD EZ grant funds was not proposed in the June 8, 2005, rule to be addressed in the regulatory text. The concern about quantifying in regulation the amount of benefit derives from the fact that the dominant use of HUD EZ grant funds is expected to be for assisting private businesses to establish, expand or remain in place in the EZ and create, increase or retain jobs that would otherwise not be available. In referring to grant funds assisting private businesses in establishing, expanding or remaining in place in the EZ, HUD uses the terms ''establish,'' ''expand'' or ''remain in place'' as they are commonly understood in everyday conversation, and more importantly as they are understood by EZs and EZ residents from the outset of the EZ program. ''Establish a business'' means the employer establishes additional working opportunities or makes investment in a new business within the EZ. The employer may be a new employer within the EZ or an existing employer that starts a business or invests in a business that is different from any that the employer currently operates within the EZ. ''Expand a business'' means that an employer, within the EZ, provides additional work opportunities or makes investments in an existing business. The expansion of an existing business results in hiring more staff, or generating more business activity. ''Remain in place in the EZ'' means that the business will not create or expand new hiring opportunities, but there will be no reduction of existing employment opportunities or business activities.

Since private businesses must principally focus on their own profitability, the public sector needs to ensure that the number of jobs that are made available is commensurate with the amount of HUD EZ grant funds provided to such businesses. To date, HUD is not aware of abuses in this regard with respect to the use of HUD EZ grant funds, but in the June 8, 2005 proposed rule, HUD solicited public comment on whether establishing specific requirements in regulation would be desirable to prevent them from occurring.

2. *Types of benefits/service area/location of the project.* Economic development professionals recognize other types of direct benefits besides creation and retention of jobs. For example, a supermarket, drug store, or for-profit medical clinic may provide essential services to support the quality of life and the business climate in the community. Given the type of project that may be proposed to be funded, the proposed rule noted that an EZ may choose which of the two standards, principal benefit or proportional benefit standard, best apply to a proposed commercial project. In addition, the location of a project within the EZ and the nature of the goods and services that the project will provide may justify a presumption that most of its goods and services would benefit the residents of the EZ. If a project is located outside the EZ, the proposed rule noted that HUD would expect the EZ to provide more substantial analysis of its service area and customer base if it claims that a majority of these kinds of benefits would accrue to EZ residents.

3. *Full-time equivalency.* The June 8, 2005, proposed rule recognized that the standards to date for ensuring that sufficient benefit will go to EZ residents from activities assisted with HUD EZ grant funds measure jobs on a full-time equivalent basis. Such measurement standard was considered important because many of the jobs created or increased in an EZ could involve less than full-time employment. Because standards require a calculation of the ''percentage'' of total jobs resulting from utilization of HUD EZ grant funds that will benefit EZ residents, HUD determined in the June 8, 2005, proposed rule that it was important that provision be made for those cases where one or more of the resulting jobs will be part-time jobs.

4. *Making jobs ''available to'' EZ residents.* The June 8, 2005, proposed rule provided that the standards for ensuring sufficient benefit to EZ residents allow for inclusion of those jobs made available to residents even if the residents do not accept the available jobs. This standard recognizes that it may not be feasible for a business to hold one or more jobs open indefinitely while the business attempts to fill its available job vacancies with EZ residents. If the EZ can demonstrate that the job referral resources and the business have a good faith plan to provide first consideration to employment of EZ residents who reasonably can be expected to fill 35 percent of the jobs, it will be seen as meeting the principal benefit standard under this regulation. Although the proposed rule did not define ''good faith,'' the proposed rule and this final rule both provide examples that demonstrate how good faith by an EZ will be determined, and these examples include public notification of employment opportunities, job fairs that are targeted to EZ residents, and first source agreements. These examples are consistent with established practices in implementing and monitoring job creation and retention activities funded with HUD's Community Planning and Development (CPD) grants.

The proposed rule noted that qualifying for tax exempt financing, increased deductions for capital equipment in accordance with section 179 of the Internal Revenue Code (26 U.S.C. 1791), and preferential tax treatment for capital gains otherwise available to an EZ business require that

the business meet the tests that define an ''Enterprise Zone Business'' under the Internal Revenue Code, including having at least 35 percent of its employees residing in the EZ.

C. In Conjunction With Economic Development

As the proposed rule noted, to date, all funds appropriated by Congress for Round II EZs (the HUD EZ grant funds) have generally been accompanied by the explicit requirement that the funds be used ''in conjunction with economic development activities consistent with the strategic plan for each EZ.'' [1] Public Law 106–554 (the Consolidated Appropriations Act, 2001, approved December 21, 2000, which provided FY2001 appropriations for HUD), does not contain this requirement, but HUD has determined to apply a consistent approach to focus the use of all HUD funds made available to EZs.) Over the course of time that such funds have been made available to these EZs, questions have arisen about whether particular planned activities would fall within this statutory restriction. While each question was answered on an individual basis, until this rulemaking, HUD had not attempted to establish specific requirements for adhering to the economic development restriction. Through the June 8, 2005, rule, HUD proposed to establish specific criteria to address the economic development requirement. Specifically HUD proposed to amend the EZ regulations in 24 CFR part 598 to remove references to HHS at 24 CFR 598.215(b)(4)(i)(D) and replace these references with statements that HUD EZ grant funds are to be used in conjunction with economic development activities consistent with an EZ's strategic plan. This rule also provides for economic development activity standards.

In order to ensure that the economic development standard is met, the rule provides that each proposed use of EZ grant funds must be described in an implementation plan and receive prior approval by HUD. In reviewing a proposed use of HUD EZ grant funds, HUD will consider the nature of the activity and, in addition to making a determination that the resident benefit standard is met, will make a decision as to whether the activity is in conjunction with economic development.

While the two requirements governing use of EZ grants funds (resident benefit and economic development) addressed in this rulemaking are independent of each other, they nevertheless have to be considered almost simultaneously by those making decisions about how to spend HUD EZ grant funds. Sections 598.605 and 598.615(a)(1) of HUD's regulations contain reminders that the resident benefit and economic development requirements must be separately met for each activity supported with HUD EZ grant funds. HUD's decision as to whether the activity is in conjunction with economic development will be made in accordance with the following:

1. An activity that involves assisting a business to establish or expand is clearly ''economic development'' (subject to the restrictions in § 598.215(c).)

2. An activity that assists a person to take, or remain in, a job also meets the economic development standard.

3. The provision of other kinds of educational assistance meets the economic development standard only if the EZ's implementation plan demonstrates that such education will be provided to persons who cannot qualify for available jobs because of the lack of some specific knowledge that would be given them through the course(s) to be provided and at least 51 percent of whom are EZ residents.

4. An activity that is clearly aimed at increasing the capacity of governance board members, or staff of the EZ's lead agency, to carry out their roles with respect to economic development projects expected to be assisted in support of the EZ's strategic plan meets the test as well.

5. The provision of public improvements, such as construction of a parking structure, extension of water or sewer capacity, street widening, etc., meets the economic development standard only if it is shown that the lack of the improvements clearly is an impediment to the establishment, expansion or retention of one or more businesses, and that the provision of the proposed public improvement would be limited as much as feasible to assisting the business or businesses. The benefits provided by such businesses would need to satisfy the resident benefit standard.

6. HUD may also expressly approve a project that does not fall within any of the previous review standards if the EZ provides evidence in the implementation plan that, in some other way, the project can reasonably be seen as meeting the economic development standard. All requests for such an exception must be in writing, accompanied by the facts that the EZ wants HUD to review and consider as justification.

D. Evaluation, Monitoring and Enforcement

The June 8, 2005, proposed rule advised that HUD would review the performance of the EZ's use of HUD EZ grant funds as part of its regular evaluation process under 24 CFR 598.420, through on-site monitoring in accordance with 24 CFR 85.40(e), and by other appropriate means.

Evaluation, monitoring and compliance with the provisions of the proposed rule, as made final by this rule, will be carried out in accordance with established procedures for monitoring CPD programs, as provided in CPD's Monitoring Guidebook. (See HUD CPD Monitoring Guidebook, *http://www.hud.gov/offices/cpd/library/monitoring/handbook.cfm*.) HUD's Performance Measurement System, which contains the designee's implementation plans, is designed to collect information on the project and actual outputs benefiting EZ residents. These monitoring procedures will be enhanced by the performance standards established by this rule.

E. Technical and Conforming Changes

In addition to the establishment of performance standards, the June 8, 2005, proposed rule also described several technical and conforming amendments that were proposed to be made to the regulations in 24 CFR part 598.

II. Changes Made to the Proposed Rule at the Final Rule Stage

Changes Made at Final Rule Stage. The following highlights some of the key changes made at the final rule stage.

- In § 598.600, HUD has revised the ''applicability'' language to make clear that the standards promulgated by this final rule apply only to projects or activities to be undertaken with HUD EZ grant funds that are proposed by the EZ after the effective date of this rule.
- In § 598.610(a)(2), which addresses the job benefits criterion under the principal benefit standard, HUD has replaced the full-time equivalency standard with a new standard for documenting the number of jobs created and filled by EZ residents. The new standard requires an EZ resident to be

[1] See Public Law 105–277 (providing omnibus and consolidated emergency supplemental appropriations for fiscal year (FY) 1999); Public Law 106–74 (providing FY2000 appropriations for HUD); Public Law 106–377 (providing FY2001 appropriations for HUD); Public Law 107–73 (providing FY2002 appropriations for HUD); Public Law 108–7 (Consolidated Appropriations Resolution, 2003, providing FY2003 appropriations for HUD, among other agencies), Public Law 108–199 (Consolidated Appropriations Act, 2004, providing FY2004 appropriations for HUD, among other agencies); and Public Law 108–447 (Consolidated Appropriations Act, 2005, providing FY2005 appropriations for HUD, among other agencies).

employed by the employer for at least 90 days during the year in order to count the job towards the 35 percent criterion of requiring jobs to be taken by, or made available to, EZ residents.

• In § 598.610(a), HUD adds a new paragraph (3) (paragraph (a)(3)) to provide for a presumed benefit test. The presumed benefit test allows for an EZ administrator to assume that certain commercial revitalization activities located and undertaken in the EZ and that provide services to both EZ residents and non-residents (e.g. supermarkets, drug stores) meet the 51 percent principal benefit standard. The application of the presumed benefit test requires the EZ to maintain documentation that briefly describes the activity, its service area, and the rationale for presuming that the activity meets the 51 percent principal benefit test.

• In § 598.610(c), the circumstances under which an EZ may utilize the exception criterion have been expanded to include activities outside the designated area.

• In § 598.610(c) and § 598.615(b), HUD provides that it will respond to request by an EZ for an exception no later than 60 days from the date of the EZ's request provided that the EZ's request with all relevant information is considered complete no later than 45 days from the date of the EZ's request.

Benefits and Costs/Burdens of this Rule. The benefits to be provided by this rule, as stated in this final rule and the proposed rule, are the establishment of standards that are designed to ensure that activities undertaken with remaining HUD EZ grant funds are consistent with the strategic plans of the EZs. The strategic plans are designed to benefit EZ residents through a broad range of strategies. The purpose of designating EZs is to generate economic development in distressed communities. In an effort to ensure that EZs are fulfilling their obligations, EZs must submit an annual report to HUD to (1) report the EZ's progress in generating economic growth through the utilization of grants and tax incentives (the federal assistance), and (2) describe ongoing and upcoming activities; that is the EZ's plan for implementing new activities through utilization of remaining funds. The implementation plans that are prescribed by this final rule are a component of the annual reporting process. The significant change to be made to the preparation of the current annual reports is that the annual reports and HUD's review of such reports will include greater emphasis on ensuring that the utilization of remaining funds are designed to benefit EZ residents.

As this final rule and the preceding proposed rule describe, EZ residents benefit from EZs primarily through increased employment and business activities that occur within the EZ, which in turn, are prompted or stimulated by the grants and tax incentives provided to the EZs. EZs stimulate growth in communities primarily through the creation of work opportunities and increased business activities. The rule establishes performance goals of 35% percent job placement for EZ residents. The wage tax credits that are offered to EZs are especially attractive to businesses, especially those looking to grow. Businesses within EZs are able to hire and retain EZ residents and apply the credits against their federal tax liability. Employers can claim a federal tax credit up to $3,000, for a full or part-time employee who is an EZ resident. The credit is based on 20% of the first $15,000 in wages earned by the qualifying employee.

The costs or burden associated with this rule are determined to be minimal. The existing regulations, as already noted, require an annual report, and the implementation plans, prescribed by this final rule, are a component of the on-line reporting system (known as PERMS) and incorporated into the annual reports. They are not an independent reporting requirement to be submitted in some other form or at some other date. Under its current Paperwork Reduction Act approval for the EZ annual report, HUD estimates that preparation of the report is 13 hours per EZ at a cost of $70 an hour resulting in a cost of $910.00 for each of the 15 Round II EZs. Although the rule will put in place a new component of the annual report, HUD estimates no significant change in burden hours to preparation of the annual report because the remaining funds that each EZ has to expend are slowly decreasing and there are fewer new activities to report in each succeeding year's report.

III. Issues Raised by Public Commenters and Responses to the Public Comments

The public comment period on the proposed rule closed on August 8, 2005. HUD received four public comments on the proposed rule. Comments were received from an empowerment zone corporation, a community organization, a regional development corporation, and a non-profit organization. The issues raised by the commenters and HUD's responses to these issues are provided in this section of the preamble.

Amount of Benefit

Comment: With respect to the preamble discussion of the amount of benefit, a commenter stated that no minimum benefit return per funding spent should be established because flexibility is imperative for programs addressing the problems of distressed communities. The commenter stated that, ''Some programs require large subsidies but are catalytic to redevelopment of an area.'' The commenter suggested that the final rule should reflect a heavy reliance on the judgment of EZ board of directors to assess projects and the amount of support that the project merits.

Commenters also expressed concern that the proposed rule failed to account for programs identified in strategic plans as central to the revitalization of the distressed area and physical development. Further, commenters expressed concern that the proposed rule would make fulfilling parts of their mission challenging because some of the program activities now fall under the exception criteria.

HUD response: The statutory and regulatory provisions governing all three EZ rounds closely mirror each other in many respects, including areas of program flexibility and local decision-making, which, HUD agrees, are essential to the administration of local EZ programs. The differences among the three rounds largely relate to their funding source and the list of eligible activities. Round I EZs received Social Services Block Grants (SSBG) of $100 million from the Department of Health and Human Services (HHS) to support an array of eligible activities, such as public services, housing, public facilities and economic development activities.

From 1999 to 2005, Round II EZs received annual HUD EZ grants ranging from $3 million to $12 million for activities carried out ''in conjunction with economic development.'' Round III EZs received no funding. The benefits for Round III EZs consist of tax incentives for spurring the EZ economies through business development and job creation and retention.

In having to change essential elements of their strategic plans in response to the changes in the expected source of funds from SSBG funds to HUD EZ grants, Round II EZs were subject to time consuming inconveniences. When Round II EZs learned that their funds would be substantially reduced from the expected $100 million in SSBG funds to the annual increments of $3 million to $12 million, these EZs had to modify

their budgets and rethink the projects/activities already identified in their HUD approved strategic plans. With SSBG funds, Round I EZs were able to carry out an array of activities from public services and facilities to housing. With the change in funding sources from SSBG to HUD Round II EZ grants, however, Round II EZ had to accommodate the change in funding sources by selecting projects and activities that would meet the statutory mandate that HUD Round II EZ grants be used ''in conjunction with economic development activities.''

As noted in the preamble of the June 8, 2005, proposed rule, ''* * * a number of questions have arisen about whether particular planned activities would fall within this statutory restriction. While each question was answered on an individual basis, HUD has not attempted to set forth specific requirements for adhering to the economic development restriction.'' (70 FR 33644) The proposed rule preamble also stated that ''this rule proposes for each EZ to submit an implementation plan for HUD approval, after this rule is issued as final and becomes final. The implementation plan will describe the EZ's planned use of HUD EZ Grant Funds, and how utilization of funds will meet one of three performance standards designed to promote benefit to residents.'' (70 FR 33642) Consistent with these statements made in the preamble of the proposed rule, the standards promulgated by this final rule apply only to projects or activities to be undertaken with HUD EZ grant funds that are proposed by the EZ after the effective date of this rule.

Section 2007(c) entitled ''Use of Grants'' of Title XIII, Subchapter C, Section 13761 of Public Law 103–66 (Omnibus Budget Reconciliation Act of 1993) requires that SSBG funds be used for activities benefiting EZ residents. Conversely, there is no explicit statutory language requiring that HUD EZ grants benefit Round II EZ residents. The absence of specific statutory language is not in of itself a barrier in formulating resident benefit requirements. Rather, in developing § 598.610, the statutory eligibility requirements that must be considered for designation and the strong participatory influence allowed EZ residents in the development of the EZ's strategic plan were a strong influence in determining the requirements of resident benefit. The eligibility requirements that must be met are poverty, high unemployment, and general distress in the nominated area.

HUD's conclusion that EZ grant funds should benefit Round II EZ residents is, in part, based on statutory eligibility requirements and on 24 CFR 598.2, which addresses the objective and purpose of the EZ program. Specifically, the objective and purpose of the EZ program is to stimulate the creation of new jobs to empower low-income persons and families to become economically self-sufficient and to promote revitalization of economically distressed areas.

In establishing the EZ performance standards, HUD intentionally avoided the establishment of a hard and fast rule requiring all of a designee's activities supported by a HUD EZ grant to meet a percentage standard without exception. Rather, HUD developed standards that contained viable options based on program flexibility and local decision-making authority, without compromising resident benefit requirements. HUD maintains that the final rule contains the necessary and appropriate restrictions on the use of the HUD EZ grant funds and that the rule is reasonable without unduly compromising local decision-making authority and flexibility by providing the following three options.

- Option #1 allows the Zone to apply the principal benefit standard requiring that the majority of beneficiaries of the project or activity described in the implementation plan reside within the EZ. Where the creation of jobs is the benefit, the resident benefit test is met when at least 35 percent of the jobs are taken by or made available to EZ residents. (See § 598.610(a) ''Principal benefit standard'' of this final rule.)
- Option #2 provides the EZ further flexibility through the proportional benefit standard by allowing it to carry out activities that are unable to meet the principal benefit standard. Under the proportional benefit standard, the EZ can use HUD EZ grant funds for an activity in proportion to the percent of all persons benefiting from the project or activity who are residents. (See § 598.610(b) ''Proportional benefit standard'' of this final rule.)
- Option #3 is the exception criteria that enable the EZ flexibility by providing the EZ with the opportunity to make its case for funding activities that cannot meet resident benefit either through principal or proportional benefit standards, but can meet resident benefit by applying the exception criteria. Application of these criteria requires the EZ to demonstrate that the proposed activity can provide substantial benefits to the EZ or provide other compelling reasons for assisting the activity with HUD EZ grant funds. An example of a compelling reason would be an activity that contributes in a critical way to the EZ's strategic plan to increase commerce within the EZ through the establishment of new business and expanded economic activity. (See § 598.610(c) ''Exception criterion'' of this final rule.)

HUD submits that the availability of the proportional benefit standard and, in particular, the exception criteria, provide additional flexibility and local discretion, which enable EZ governance boards and other local governing entities to assess projects and to determine the amount of support a project/activity merits, while still ensuring that EZ residents are the principal beneficiaries of local EZ programs. Consistent with the EZ program goal of flexibility and local decisionmaking, the exception criteria allows the locality to use EZ grant funds for an activity outside of the designated area if the EZ can demonstrate an activity contributes to its strategic plan.

The above three options support the EZ goals of designee flexibility and local decisionmaking, particularly with respect to the EZ governing boards. In response to a comment from an EZ resident seeking to apply for a business grant, the final rule better ensures that residents are the principal beneficiaries of HUD EZ grants without compromising local authority and decisionmaking.

Consequently, HUD believes that the resident benefit standards as proposed in the June 8, 2005, proposed rule, are needed and reasonable in protecting the interests of EZ residents as beneficiaries of the EZ program. For these reasons, HUD declined to make changes to these standards at this final rule stage.

Full-Time Equivalency

Comment: With respect to the discussion of full-time equivalency in the preamble to the proposed rule, one commenter stated that while appreciative of the intent underlying the conversion of EZ jobs to a full-time schedule equivalent, limited EZ funding and limited staff make such a requirement overly burdensome to monitor. The commenter stated that requiring businesses to report detailed work information on employees and then verifying the data is a time consuming process that will hinder staff from pursuing other development work.

HUD response: Among the benefits of an EZ designation are the tax advantages that an eligible EZ business receives from tax-exempt financing, increased Section 179 deductions, and capital gains exclusions. A business in an EZ is also eligible for a maximum $3,000 wage credit for every EZ resident it employs. In meeting the 35 percent EZ

resident/employee test, the Internal Revenue Service (IRS) generally does not make a distinction between full- or part-time jobs. In this regard, the IRS does not have a full-time equivalency requirement. To meet the 35 percent test of requiring employees to live in the designated EZ area, the IRS provides two methods: the per-employee fraction and the employee actual work hour fraction. An eligible EZ business may use either one. The per-employee fraction is a fraction, the numerator of which is, during the taxable year, the number of employees who work at least 15 hours a week for the employer, who reside in the EZ, and who are employed for at least 90 days, and the denominator of which is, during the same taxable year, the aggregate number of all employees who work at least 15 hours a week for the employer and who are employed for at least 90 days. The employee actual work hour fraction is a fraction, the numerator of which is the aggregate total actual hours of work for the employer of employees who reside in the EZ during a taxable year, and the denominator of which is the aggregate total actual hours of work for the employer of all employees during the same taxable year. *See* 26 CFR 1.1394–1(e)(3)(ii).

The IRS also requires that a business that takes advantage of the tax incentives maintain a record and/or documentation, which evidence that the business has met the 35 percent job requirement. The only documentation that a business maintains as evidence in meeting the 35 percent resident/employee requirement is a statement from the employee, who under the penalty of perjury, provides his or her address as principal residence and an assurance that the employee will notify the employer of a change in the employee's principal residence. In addition, the IRS requires that the employer must not have actual knowledge that the principal residence set forth in the employee's certification is not the employee's principal residence. *See* 26 CFR 1.1394–1(e)(1).

HUD finds merit in the comments regarding full-time equivalency test requiring a business to establish records that document and verify the hours of part-time employees separately from the hours of full-time employees, and agrees that maintaining and monitoring such records is overly burdensome. HUD also agrees that the full-time equivalency test imposes an unreasonable drain on staff and funding resources of a business, particularly for small and start-up businesses.

In view of the fact that the IRS does not require a full-time equivalency test for EZ resident jobs, HUD removed the full-time equivalency requirement and replaced this requirement with a new standard for documenting the number of jobs created and filled by EZ residents. The new standard only requires that an EZ resident be employed by the employer for at least 90 days during the year in order for the applicable business to count the job toward meeting the 35 percent test.

In removing the full-time equivalency test and substituting this test with the 90-day standard, HUD believes that it provides a more reasonable and practical approach in meeting the job benefit requirement of § 598.610(a)(2). This section recognizes the good faith efforts of businesses in opening job opportunities to EZ residents. In order to take advantage of certain tax incentives, however, the business still must meet the IRS 35 percent resident/employee test.

Recordkeeping and evidence of the jobs taken by EZ residents would be limited to a statement from the EZ resident/employee showing the address as the employee's principal residence and the employee's assurance that the employer would be notified of a change in the employee's principal residence.

Section 598.610: Resident Benefit Standards

Comment: One commenter recommends a presumption that the resident benefit test has been met for EZ-based activities consistent with already established strategic plans approved by the local governance board of the EZ. The commenter stated that such a presumption would be consistent with the presumption allowed under Community Development Block Grant (CDBG) funds with respect to qualifying jobs at businesses assisted within an EZ.

HUD response: When an EZ receives CDBG funds in support of an economic development activity involving job creation and retention, § 570.208(a)(4)(iv) of the CDBG regulations (24 CFR part 570) allows the employee to qualify as a low-or-moderate income person under the presumption of benefit standard if that employee resides in an EZ. Consequently, for the purpose of receiving CDBG funds in support of a job creation activity in an EZ, the presumed benefit standard set forth in 24 CFR 570.208 (a)(4)(iv) satisfies the CDBG criteria for national objectives and is one that only applies to CDBG funded job creation or retention activities.

Conversely, when a job creation and retention activity is in whole or part supported with HUD EZ grants, the rule applicable to HUD EZ grants governs. Importantly, funding job creation or retention activities with HUD EZ grants is closely aligned with the benefits of the $11 billion tax incentive package available to businesses in EZs as well as to businesses in Renewal Communities (RCs). Tax incentives and HUD EZ grant funds are dual benefits exclusively for Round II EZ designees.

The objective of Round II benefits is to couple the use of EZ funds for activities ''in conjunction with economic development'' with the aggressive utilization of tax incentives. HUD believes that this rule will help ensure the empowerment of low-income EZ residents to become economically self-sufficient through job creation and retention.

HUD concludes that the presumption of benefit standard and the resident benefit standards of § 598.610 must be applied separately to each of the portions of assistance provided with CDBG funds and HUD EZ grant funds. Therefore, HUD is not including, in this final rule, the CDBG presumption of benefit, referenced in 24 CFR 570.208 (a)(4)(iv)-(v), as an option for job creation activities funded in whole or in part with HUD EZ grants.

Comment: All four commenters advocated for a provision enabling community revitalization and other activities to meet principal benefit standards as a presumed benefit to EZ residents. According to the commenters, a presumed benefit provision would eliminate the administrative burden of having to document resident benefit, protect the ability of EZ organizations to fulfill critical parts of their mission without having to justify to HUD why an exception to the principal benefit standard is justified, and allow EZs to carry out activities directed at slum and blight reduction.

The commenters objected to the application of undefined exception criteria, viewing it as creating uncertainty resulting in another HUD review of activities already identified in the HUD approved strategic plan. One of the commenters requested clarification of the resident benefit requirement as this requirement relates to place-based redevelopment activities and their accompanying indirect effects on economic development.

HUD response: The proposed rule presented the ''presumed benefit'' analysis in Section D (''Additional Issues'') of the preamble, specifically in subsection 2 of Section D (''Types of benefits/service area/location of the project''), but did not address ''presumed benefit'' in the text of the rule. HUD believes that many of the

comments regarding presumed benefit have merit and, as noted earlier in this preamble, HUD is revising § 598.610 by adding a new paragraph (a)(3) entitled ''presumed benefit'' to this section. The addition of a presumed benefit test recognizes other types of direct benefit activities that are located in an EZ and serve both EZ residents and non-residents. The test allows EZ administrators to assume that certain commercial revitalization activities located and undertaken in the EZ and that provide services to both EZ residents and non-residents (e.g. supermarkets, drug stores) meet the 51 percent principal benefit standard. The application of the presumed benefit test requires the EZ to maintain written documentation that briefly describes the activity, its service area, and the rational for presuming that the activity meets the 51 percent principal benefit standard. Important to this issue is the fact that the new paragraph does not extend to activities outside the designated area.

However, HUD recognizes that there may be circumstances where HUD EZ grants assist activities outside the designated area that would benefit EZ residents. For such cases, HUD provides, through this final rule, for an exception criterion in § 598.610(c) to cover activities outside of the designated area. This expansion of coverage of the exception criterion gives an EZ the opportunity to justify why an activity that, on its face, does not appear to benefit EZ residents, would in fact result in substantial benefits to EZ residents upon closer examination. An EZ that wishes to use this exception criterion must provide HUD with a substantial analysis of its service area and customer base to support its claim that the activities outside the designated area would result in substantial benefit to the EZ and meet the goals of its strategic plan. Providing EZs with the opportunity to apply an exception criterion in these situations does not compromise the purpose of the EZ program, which is to stimulate the creation of new jobs, empower the residents to become more economically self-sufficient, and promote the revitalization of distressed areas.

HUD has determined that the exception criterion is a reasonable option to provide EZs that wish to demonstrate that utilizing HUD EZ grant funds for activities outside a designated area (and because the activities are outside the designated area, the activities are unable to meet resident benefit under the principal benefit standard or proportional standard), do, in fact, benefit EZ residents.

In response to the comment for clarification of the relationship of the resident benefit requirement to place-based redevelopment activities and their impact on economic development, HUD believes that the final rule satisfactorily explains this relationship in both the exception criterion described in § 598.610(c) (''resident benefit standard'') and the new presumed benefit standard in § 598.610(a)(3).

Comment: One commenter requested that following submission by an EZ of a request for an exception with accompanying documentation, HUD commit to a period of 30 calendar days in which HUD has to respond to the request.

HUD response: There may be times when HUD will need additional information as part of its review of the EZ's exception request. HUD's concern is that to impose a 30-calendar day review period may not allow sufficient time for HUD to request and the EZ to provide additional information or respond to any questions that HUD may have about the proposed activity for which the EZ seeks an exception under § 598.610(c). However, HUD is also aware of the need to respond as promptly as possible to the EZ's request once all information has been provided.

Accordingly, the final rule provides in § 598.610(c) that HUD will notify the EZ of its response to the exception requested under § 598.610(c) within 60 days of the receipt of the EZ request provided that the EZ has promptly provided any additional information requested by HUD and the request is considered complete no later than 45 days from the date of the request. The final rule incorporates the same provision with respect to exceptions requested under § 598.615(b).

Section 598.610(a)(2): Job Benefit

Comment: One commenter stated that the expansion of the resident benefit requirement to include not only jobs filled by EZ residents, but made available to EZ residents is a ''great'' one. The commenter suggested that this language be incorporated into contracts through a first source type agreement requiring businesses to advertise and recruit from organizations that train and place EZ residents.

HUD response: HUD agrees that a first source type arrangement can be an effective means for an EZ to assure that an assisted business will make jobs available to EZ residents. Such an arrangement is one way for an EZ to satisfy § 598.610(a)(2).

Section 598.615(a)(1)(i)(ii): In Conjunction With Economic Development

Comment: One commenter requested that HUD clarify the relationship of the resident benefit requirement to place-based redevelopment activities and the accompanying indirect effects on economic development.

HUD response: HUD believes that the manner in which place-based redevelopment activities may meet resident benefit standards is clarified by the new paragraph added at this final rule stage to § 598.610(a) on presumed benefit.

Comment: One commenter stated that the economic development standards are unduly restrictive. The commenter stated that activities that qualify as ''in conjunction with economic development'' should not be limited to traditional economic development activities, but rather should allow for EZ activities to be tied to an economic development strategy that promotes a coordinated initiative. The commenter stated that support for this comprehensive interpretation arises from Congress' use of the words ''in conjunction with'' rather than requiring that ''funds must be used for economic development.''

HUD response: HUD disagrees with the premise that the discussion of ''in conjunction with economic development'' in the preamble to the proposed rule, and § 598.615, which establishes economic development standards present unduly restrictive standards and are contrary to Congressional intent. An interpretation which allows for non-economic development activities to be automatically deemed as meeting the standard of ''in conjunction with economic development'' because of ties to an EZ's economic development strategy, is contrary to the statutory language, which mandates that HUD EZ grants be used in conjunction with economic development.

The statutory language that describes the purpose and use of HUD EZ grants supports a view that it is the intent of Congress to limit the use of HUD EZ grants to clearly defined activities that primarily and directly promote economic development. It is HUD's view that § 598.615 captures the types of activities/projects that are most likely to promote economic development and business revitalization. Even though some of the comments suggest that these ''traditional'' type activities are limiting efforts for a coordinated initiative, HUD believes that final rule's economic development standards are in the best

interest of the EZ program in providing economic opportunity to EZs through the retention and creation of jobs and business revitalization.

However, HUD recognizes the need for a provision giving EZs the opportunity to demonstrate that carrying out a non-economic development activity/project is in fact in conjunction with economic development; for example, the construction or rehabilitation of housing, in an area of great potential for economic development, but one where the economic development potential may not be fully realized because of a great need for housing and public improvements, such as water and sewer capacity. In such a case, § 598.615(b) provides the EZ with the opportunity to apply for an exception request, which must be accompanied by documentation that the proposed non-economic development activity also meets the resident benefit requirement of § 598.610.

Section 598.615(b) provides for the opportunity to request an exception for those limited circumstances where a project/activity appearing to have no direct relationship to economic development may still be critical to the EZ's economic strategy as defined in its strategic plan. The exception provision allows the EZ to justify why certain activities that have no readily visible direct connection to economic development may still meet the economic standards of § 598.615. The exception provision also allows scrutiny of the proposed project/activity and for HUD to determine if it can reasonably meet the economic development requirement.

Comment: With respect to § 598.615(a)(1)(i) and (ii), one commenter stated that for this provision to work, the 35 percent EZ resident employment requirement must include a ''best effort'' clause so that a business can operate if no EZ residents are available.

HUD response: HUD believes that the addition of a ''best effort'' clause is unnecessary. As noted earlier in this preamble, the final rule recognizes that a business may not be able to hold open indefinitely employment opportunities for EZ residents to fill. However, the EZ should demonstrate that EZ businesses with employment opportunities made a good faith effort to recruit and give first consideration to EZ residents. Examples of good faith efforts may include public notification of employment opportunities targeted to EZ residents and job fairs.

Comment: With respect to §§ 598.615(a)(3); 598.615(a)(4), and 598.615(a)(5), one commenter requested that the final rule modify these sections to: (1) Include, in § 598.615(a)(3), ''soft-skill training'' and ''youth access'' as additional activities to be categorized as education resources; (2) allow, in § 598.615 (a)(4), for employees of EZ organizations to undertake capacity building; and (3) include, in § 598.615(a)(5), housing development in conjunction with the appropriate infrastructure.

HUD response: An expectation arose during the Round II EZ designation process that the same funding source and stream that was provided to Round I EZs would eventually also be available to the 15 Round II EZs; that is, that each of the Round II EZs would receive $100 million in SSBG funds.

This expectation resulted in Round II EZs developing strategic plans and activities and projects based on substantially larger funding amounts than the funding that actually became available to the Round II EZs. Since their time of designation, Round II EZs received HUD EZ grants of $25.6 million rather than the anticipated $100 million in SSBG funds.

The receipt of a lower level of funding to carryout an EZ's strategic plan resulted in HUD limiting and restricting the type and range of eligible activities/projects meeting the statutory test of ''in conjunction with economic development.'' For example, use of HUD EZ grant funds for public improvements is permissible ''only'' if the EZ can show in its implementation plan that the lack of the public improvements clearly presents an impediment to the establishment and or expansion of a business.

Even though this same ''only if'' restriction is found in the educational assistance provision, it does not preclude ''training to youth.'' The requested modification to expand § 598.615(a)(4) to include employees of organizations serving the EZ is considered beyond the scope of ensuring the most comprehensive and effective use of limited resources. Although HUD did not make the requested modification to § 598.615(a)(5) to include housing development, as noted earlier in this preamble, an EZ may demonstrate that housing development is in conjunction with economic development.

Comment: A commenter requested assurance that the final rule would provide that the standards established by the final rule would only be applied prospectively to implementation plans and activities in order to avoid the hardship that EZs may face in having to redesign programs and resubmit plans of grant-funded programs in accordance with the new standards.

HUD response: Unless there is statutory authority that allows or directs for new regulations to be applied retroactively, all rulemaking is prospective. Nevertheless, HUD has revised the ''applicability'' language of § 598.600 to make clear that the standards promulgated by this final rule apply only to a project or activity to be undertaken with HUD EZ grant funds that is proposed by the EZ after the effective date of this rule.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in subpart G of 24 CFR part 598 were submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This submission was reviewed and approved, and provided the following OMB approval number: 2506–0148. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable at this final rule stage and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule only establishes program-specific requirements governing a recipient's use of Federal grant funds and does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule establishes performance standards for the use of grant funds made available to EZs by HUD, largely pertaining to benefit levels and economic-development activities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this is a ''significant regulatory action,'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 598 is 14.244.

List of Subjects in 24 CFR Part 598

Community development, Economic development, Empowerment zones, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban renewal.

■ Accordingly, HUD amends 24 CFR part 598 as follows:

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

■ 1. The authority citation for 24 CFR part 598 continues to read as follows:

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

§ 598.3 [Amended]

■ 2. In § 598.3, remove the definition of ''EZ/EC SSBG funds.''

■ 3. In § 598.210, remove paragraphs (e) and (g), redesignate paragraph (f) as paragraph (e), redesignate paragraph (h) as paragraph (f), and revise newly redesignated paragraphs (e) and (f) to read as follows:

§ 598.210 What certifications must governments make?

* * * * *

(e) Provide that the nominating governments or corporations agree to make available all information requested by HUD to aid in the evaluation of progress in implementing the strategic plan; and

(f) Provide assurances that the nominating governments will administer the Empowerment Zone program in a manner that affirmatively furthers fair housing on the basis of race, color, national origin, religion, sex, disability, and familial status (presence of children).

§ 598.215 [Amended]

■ 4. In § 598.215, remove the last sentence of paragraph (b)(4)(i)(D).

■ 5. Revise § 598.405 to read as follows:

§ 598.405 Environmental review.

Where any EZ's strategic plan or any revision thereof proposes the use of HUD EZ Grant Funds for activities that are not excluded from environmental review under 24 CFR 50.19(b), the EZ shall supply HUD with all available, relevant information necessary for HUD to perform any environmental review required by 24 CFR part 50.

■ 6. Add a new subpart G to read as follows:

Subpart G—Empowerment Zone Grants

Sec.
598.600 Applicability.
598.605 Implementation plan.
598.610 Resident benefit standards.
598.615 Economic development standards.
598.620 Evaluation, monitoring, and enforcement.

§ 598.600 Applicability.

This subpart applies to a project or activity proposed by an Empowerment Zone after January 14, 2008 to be undertaken with funds appropriated by Congress and made available by HUD specifically for use by the EZ. These funds are referred to as ''HUD EZ Grant Funds.''

§ 598.605 Implementation plan.

(a) *Implementation plan content.* An EZ must submit an implementation plan for HUD approval that addresses each project or activity proposed to be undertaken by the EZ with HUD EZ Grant Funds. The implementation plan must:

(1) Describe the project or activity;

(2) Identify the completion date or duration of the project or activity;

(3) Provide the total cost of the project or activity;

(4) Identify the amount of HUD EZ Grant Funds to be used for the project or activity; and

(5) Include a narrative description of how the project or activity meets the resident benefit and economic development standards of this subpart.

(b) *Proposed funded project or activity.* The project or activity proposed in the implementation plan is subject to the following requirements:

(1) The Federal requirements listed in 24 CFR 5.105;

(2) The governmentwide, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments at 24 CFR part 85;

(3) The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 et seq.);

(4) The environmental review and approval requirements of 24 CFR part 50;

(5) The provisions of the Memorandum of Agreement (MOA) setting forth the obligations and requirements that the state and local governments, as Empowerment Zone designees, have agreed to meet as signatories of the agreement.

(6) Recipients of the HUD EZ Grant Funds also must adhere to the requirements set forth in the provisions of the grant agreement for HUD EZ Grant Funds.

§ 598.610 Resident benefit standards.

The project or activity described in an implementation plan submitted for HUD approval by an EZ to describe the planned use of HUD EZ Grant Funds must meet one of the following three standards of resident benefit for determining the amount of HUD EZ Grant Funds that may be used to fund a particular project or activity:

(a) *Principal benefit standard*—(1) *Benefits other than jobs.* If a majority (51 percent) of the direct beneficiaries of the project or activity described in the implementation plan reside within the EZ, the project or activity may be fully assisted with HUD EZ Grant Funds.

(2) *Jobs benefit.* In any case where the direct benefits to be provided by a project or activity described in an implementation plan will be in the form of jobs, the project may be fully assisted with HUD EZ Grant Funds if at least 35 percent of the jobs are taken by, or made available to, EZ residents. A job satisfies this 35 percent requirement if the EZ resident is employed by the employer for at least 90 days during the year. For purposes of this 35 percent requirement, an employer may rely on a certification by the employee that provides to the employer the address of the employee's principal residence, and requires the employee to notify the employer of a change of the employee's principal residence.

(3) *Presumed benefit.* Certain commercial revitalization activities that are located and undertaken in an EZ and that provide services to both EZ residents and non-residents (e.g., supermarkets, drug stores) will presume to meet the 51 percent principal benefit standard in paragraph (a)(1) of this section, provided that the EZ maintains written documentation that briefly describes the activity, its service area, and the rationale for presuming that the activity meets the 51 percent principal benefit standard.

(b) *Proportional benefit standard.* If a project or activity described in an implementation plan cannot meet the principal benefit standard of paragraph (a) of this section, the percent of the cost of the project or activity that may be assisted with HUD EZ Grant Funds may not be greater than the percent of all persons benefiting directly from the project or activity who reside within the EZ.

(c) *Exception criterion.* In any case where a proposed project or activity, including activities outside of the designated area, would not meet the standards of paragraph (a) or paragraph (b) of this section, HUD EZ Grant Funds may be used where HUD determines that an implementation plan, accompanied by the facts that the EZ requests HUD to review and consider as justifying the exception, demonstrates substantial benefits to the EZ that would result from the project or other compelling reasons justifying the appropriateness of the implementation plan to the EZ's strategic plan. A request by an EZ for an exception under paragraph (c) of this section will receive a response by HUD no later than 60 days from the date of the EZ's request provided that the EZ's request with all relevant information is considered complete no later than 45 days from the date of the EZ's request.

§ 598.615 Economic development standards.

(a) *Economic development standards.* The project or activity in an implementation plan submitted for HUD approval by an EZ to describe the planned use of HUD EZ Grant Funds must meet one of the following economic development standards:

(1) *Business development assistance.* An activity that involves assisting a business in the EZ meets the standard, whether or not the business will create any new jobs. Any such activity must also meet the standards for benefiting a sufficient portion of EZ residents as required under § 598.610. Qualifying activities include the use of HUD EZ Grant Funds to:

(i) Assist in establishing a business;

(ii) Expand a business, including efforts to stimulate the development or expansion of microenterprises; and

(iii) Assisting businesses that provide goods or services within the EZ to remain within the EZ.

(2) *Employment training and assistance.* An activity that assists a person to take, or remain in, a job, subject to meeting the standards for benefiting a sufficient proportion of EZ residents as required under § 598.610, including:

(i) Job training;

(ii) Provision of child care;

(iii) Transportation to or from the place of employment or the place where job training is taking place; or

(iv) Counseling persons on job-related skills, such as how to interview successfully for a job, and dress and act appropriately in the conduct of a job.

(3) *Educational assistance.* The provision of educational assistance meets the economic development standard only if the EZ's implementation plan demonstrates that such education will be provided to persons who cannot qualify for available jobs because of the lack of some specific knowledge that would be given them through the course(s) to be provided. Any educational assistance provided must also meet the standard for benefiting a sufficient portion of EZ residents as required under § 598.610.

(4) *EZ administrative capacity.* An activity that increases the capacity of governance board members or staff of the EZ's lead agency to carry out their roles with respect to economic development projects expected to be assisted in support of the EZ's strategic plan is eligible. This includes the cost of attending a conference on economic development. The use of HUD EZ Grant Funds for capacity building under this paragraph is deemed to provide adequate benefit to EZ residents.

(5) *Public improvements.* The provision of public improvements, such as extension of water or sewer capacity, or street widening, meets the economic development standard only if it is shown in the implementation plan that the lack of the improvements clearly is an impediment to the establishment, expansion or retention of one or more businesses in the EZ, and that the provision of the proposed public improvement would be limited as much as feasible to assisting the business or businesses. Any public improvements must also meet the standard for benefiting a sufficient portion of EZ residents as required under § 598.610.

(b) *Exception request.* HUD may approve a project or activity that does not fall within any of the previous review standards of this section if the EZ provides evidence that, in some way, the project or activity can reasonably be seen as meeting the economic development standard. Such a project or activity must also meet the standards for benefiting a sufficient portion of EZ residents as required under § 598.610. All requests for such an exception must be in writing, accompanied by the facts that the EZ wants HUD to review and consider as justification. A request by an EZ for an exception under this paragraph (b) will receive a response by HUD no later than 60 days from the date of the EZ's request provided that the EZ's request with all relevant information is considered complete no later than 45 days from the date of the EZ's request.

§ 598.620 Evaluation, monitoring, and enforcement.

(a) *Progress, evaluation, and monitoring.* HUD will review the performance of an EZ's use of HUD EZ Grant Funds for compliance with this subpart as part of its regular evaluation process under 24 CFR 598.420, through on-site monitoring under 24 CFR 85.40(e), and by other appropriate means.

(b) *Warning letter.* If HUD has reason to believe that an EZ is not carrying out its funded activities in accordance with any applicable requirements, including the resident benefit and economic development standards of this subpart, HUD may forward a warning letter to the EZ informing it of a potential violation and recommending action to avoid a violation. A warning letter is not a prerequisite for any other action HUD may take.

(c) *Notice of violation.* If HUD determines that there appears to be a violation in the use of HUD EZ Grant Funds, it will notify the EZ of the alleged violation and the action HUD proposes to take under 24 CFR 85.43 or its successor regulation or if appropriate, 24 CFR 598.430.

(d) *Response to notice.* A notice sent to an EZ under paragraph (c) of this section will provide the EZ with at least 30 calendar days from the time HUD sends the notice to respond with any information to rebut or mitigate the alleged violation.

(e) *Final action.* If the EZ does not respond within the period specified pursuant to paragraph (d) of this section, HUD will make a final determination of the violation and may proceed to take the action proposed in the notice. If the EZ responds, HUD will consider the information received from the EZ and may request additional information. After considering the information received from the EZ, HUD will notify the EZ of HUD's final determination and action, affirming, modifying, or repealing HUD's initial determination of an alleged violation and proposed action.

Dated: November 13, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–24112 Filed 12–12–07; 8:45 am]

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Federal Register

Thursday,
December 13, 2007

Part V

Department of Labor

29 CFR Part 29

Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations; Proposed Rule

DEPARTMENT OF LABOR

29 CFR Part 29

RIN 1205–AB50

Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations

AGENCY: Employment and Training Administration, Labor.

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

SUMMARY: The Department of Labor (DOL or Department) is issuing a Notice of Proposed Rulemaking (NPRM) to update the regulations that implement the National Apprenticeship Act of 1937. 29 U.S.C. 50. On February 18, 1977, the Department promulgated 29 Code of Federal Regulations (CFR) part 29 to establish, for certain Federal purposes, labor standards, policies and procedures for the registration, cancellation and deregistration of apprenticeship programs, and apprenticeship agreements. Part 29 also provided for the recognition of a State Apprenticeship Agency as an agency authorized to register local apprenticeship programs for Federal purposes, and for the revocation of such recognition. In the succeeding 30 years, the American economy and workforce have changed significantly. The proposed rule addresses those changes by both making the procedures for apprenticeship program registration more flexible and by strengthening oversight of program performance. The proposed rule also updates part 29 to incorporate gender neutral terms and technological advances in the delivery of related technical instruction. Such revisions will enable DOL to promote apprenticeship opportunity in the 21st century while continuing to safeguard the welfare of apprentices.

DATES: The Department invites interested persons to submit comments on this proposed rule. To ensure consideration, comments must be in writing and must be received on or before February 11, 2008.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB50, by either one of the two following methods:

- *Federal e-Rulemaking Portal: www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Written comments, disk, and CD-Rom submissions may be mailed or delivered by hand delivery/courier to Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name, as well as RIN 1205–AB50.

Please be advised that 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. Therefore, the Department recommends that commenters safeguard their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments. It is the responsibility of the commenter to safeguard his or her information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC, may be delayed. Therefore, in order to ensure that comments receive full consideration, the Department encourages the public to submit comments via the Internet as indicated above.

Docket: The Department will make all the comments it receives available for public inspection during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the proposed rule available, upon request, in large print or electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternate format, contact the office of Thomas M. Dowd at (202) 693–3700 (VOICE) (this is not a toll-free number) or (877) 889–5627 (TTY/TDD). You may also contact Mr. Dowd's office at the address listed above.

FOR FURTHER INFORMATION CONTACT: Sherril Hurd, Acting Regulation Unit Team Leader, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210; E-mail *hurd.sherril@dol.gov;* Telephone (202) 693–3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This preamble is divided into three sections. Section I provides general background information on the development of the proposed revisions to 29 CFR part 29. Section II is a section-by-section analysis of the proposed regulatory text. Section III covers the administrative requirements for this proposed rulemaking as mandated by statute and executive order.

I. Background

The National Apprenticeship Act of 1937 authorized DOL

> to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, and to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship * * *

In the 30 years since the Department promulgated the existing standards at 29 CFR part 29 that provide for the registration of apprenticeship programs, technological advances, demographic changes, and globalization have significantly altered the context in which apprenticeship programs operate. The revision of part 29 will enable the National Apprenticeship System to keep pace with changes in the economy and corresponding workforce challenges, continue apprenticeship's vital role in developing a skilled, competitive workforce, and further promote registered apprenticeship as an important talent development strategy offered through the public workforce investment system. For example, the proposed revisions enhance flexibility in the requirements for provision of related technical instruction, permit competency-based progression through an apprenticeship program, and establish requirements for education and training of apprenticeship instructors that align with developments in the workforce and education systems.

In developing the proposed rule, DOL consulted extensively with its Advisory Committee on Apprenticeship (ACA). Chartered under the Federal Advisory Committee Act (FACA), the ACA provides advice and recommendations to the Secretary of Labor (Secretary) on a wide range of matters related to apprenticeship. The ACA is comprised of approximately 30 members with equal representation of employers, labor organizations, and the public. In June

2006, the ACA unanimously adopted the draft regulatory text developed by the Committee's Work Group on Regulations and Competency-Based Training and, in August 2006, forwarded the recommended text to the Department. The ACA's recommendations focused on the provisions of existing part 29 (§§ 29.1 through 29.11) that pertain to apprenticeship program standards, registration and deregistration.

In addition to updating the provisions that address DOL's registration and oversight of apprenticeship programs, the Department proposes to revise the provisions of existing part 29 (§§ 29.12 and 29.13) that pertain to administration of the National Apprenticeship System. The Department drafted the proposed regulatory text with input from the National Association of State and Territorial Apprenticeship Directors (NASTAD) and from State Apprenticeship Agencies. The proposed provisions effectuate the Department's mandate under the National Apprenticeship Act by establishing clear accountability within the National Apprenticeship System.

II. Summary and Discussion of Regulatory Provisions: Labor Standards for the Registration of Apprenticeship Programs

Throughout the proposed rule, the name of the organization in DOL that is responsible for apprenticeship has been changed from the Bureau of Apprenticeship and Training (BAT) to reflect its current name, the Office of Apprenticeship. All language that was gender specific has been modified to a gender-neutral term (e.g., journeyman has been changed to journeyworker).

Purpose and Definitions (§§ 29.1 and 29.2)

Proposed revisions in § 29.1(b) add an additional purpose to this section to ''promote apprenticeship opportunity.'' This addition would further articulate the Department's mandate under the National Apprenticeship Act of 1937 to expand the National Apprenticeship System. In recent years, the Department has engaged in several pilot and demonstration programs to expand apprenticeship opportunities for workers in industries that have not traditionally used the registered apprenticeship model. This proposed addition would implement the Department's intention to further expand registered apprenticeship into new industries and occupations, and to continue to align registered apprenticeship with the changing workforce needs of business and industry.

The Department proposes to delete existing § 29.1(c), which provides contact information for individuals requesting further information about part 29. The information in this paragraph is out-of-date. The Department has determined that contact information should not be codified, given the rate at which it becomes obsolete, so § 29.1(c) is proposed for deletion.

Proposed § 29.2 clarifies and redesignates existing definitions and establishes new definitions for certain terms used in the registration of apprenticeship programs and in the ongoing operations of the National Apprenticeship System. Proposed § 29.2 organizes the definitions alphabetically. Thus, there is no longer a need to designate paragraphs in this section using an alphanumeric format. In addition, the proposed rule adds new definitions for the terms ''competency,'' ''electronic media,'' ''interim credential,'' ''journeyworker,'' ''Office of Apprenticeship,'' ''provisional registration,'' ''State office,'' ''supplemental instruction,'' ''technical assistance,'' and ''transfer.'' Most of the revisions and additions reflect changes that State Apprenticeship Agencies, apprenticeship program sponsors, and the Department have incorporated into the National Apprenticeship System in the last decade. Those proposed definitions provide underpinnings for proposed provisions that offer greater flexibility for registered apprenticeship programs to address changing workforce demands.

The Department proposes to carry forward the following existing definitions for terms defined in the current regulations: ''administrator,'' ''apprentice,'' ''apprenticeship program,'' ''cancellation,'' ''Department,'' ''employer,'' ''Federal purposes,'' ''registration of an apprenticeship agreement,'' ''registration of an apprenticeship program,'' ''sponsor,'' and ''State.'' Accordingly, the Department is not inviting comment on those terms.

Proposed § 29.2 revises the existing definitions for ''apprenticeship agreement'' and ''apprenticeship committee'' to clarify that an apprenticeship agreement is between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as an agent for the program sponsor. Program sponsor is a more appropriate term than ''employer,'' which is used in the current regulations for the entity with which the apprentice enters an apprenticeship agreement because the apprenticeship program sponsor is the entity that signs the apprenticeship agreement. The revision to ''apprenticeship committee'' clarifies that the committee acts as an agent for the sponsor in the administration of an apprenticeship program.

Proposed § 29.2 revises the existing term ''certification'' to be ''certification or certificate'' and revises the existing definition. The proposed definition carries forward the existing provisions for certification of National Guidelines for Apprenticeship Standards and certification that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program. The proposed definition also incorporates two circumstances (issuance of a certificate that documents completion of apprenticeship, as provided in § 29.5(b)(15), and issuance of a Certificate of Registration, as provided in § 29.3(f)) that correspond to existing requirements but have not been previously included in the definition of certification. The proposed definition also adds the circumstance where a Registration Agency determines that an apprentice has successfully met the requirements to receive an interim credential. This added component of the definition facilitates compliance with proposed § 29.5(b)(15), which provides for the issuance of an interim credential.

Proposed § 29.2 adds definitions for two related terms, ''interim credential'' and ''competency.'' These definitions would be added because, in the past 6 years, business, industry, and labor have requested a more flexible and accountable National Apprenticeship System that meets their workforce development needs. To address these requests, the Department conducted pilot programs in which sponsors measured apprentices' attainment of certain skills and competencies rather than using the traditional, time-based approach.

To this end, the Department has defined ''interim credential'' as ''a document issued by the Registration Agency upon request of the appropriate sponsor as certification of competency attainment by an apprentice;'' and ''competency'' as ''the attainment of manual or technical skills and knowledge, as specified by an occupational standard.'' Rather than providing that an apprentice could only receive one credential (certificate of completion of apprenticeship), which is the norm under a time-based apprenticeship approach, the proposed definitions and the associated regulatory provisions would enable apprentices to obtain portable credentials

commensurate with increasing skills and competencies acquired and demonstrated throughout an apprenticeship program.

These proposed definitions also implement the Department's intention to provide multiple points of entry to and exit from apprenticeship programs, and would codify the Department's existing practice of registering apprenticeship programs that issue interim credentials. These provisions will formalize the process used in the pilot programs and further promote apprenticeship opportunities to employees and employers that have not previously participated in the National Apprenticeship System.

Proposed § 29.2 adds a new definition for ''electronic media'' for use in related technical instruction and defines the term to mean ''media that utilize electronics or electromechanical energy for the end user (audience) to access the content, and includes, but is not limited to, electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media and/or interactive distance learning.'' This definition provides for increased flexibility in the related technical instruction component of an apprenticeship program and enables the National Apprenticeship System to keep pace with the changing dynamics and progressive nature of education through distance learning and multiple delivery approaches. Additionally, the proposed definition would clarify that related technical instruction in the National Apprenticeship System is not confined to a physical classroom setting. The Department based this proposed definition on consultations with the ACA and NASTAD.

Proposed § 29.2 adds a new definition, ''journeyworker,'' which is ''a worker who has attained a level of skill and competency recognized within an industry as having mastered the skills and competencies required for the occupation.'' The Department proposes to add this definition to provide a designation of a level of skill, ability and knowledge possessed by an individual in a specific occupation, as defined and used by employers, industry, and labor, which is recognized as having attained mastery of that occupation. The definition is based on industry norms and common language used in the National Apprenticeship System.

Proposed § 29.2 adds a new term, the ''Office of Apprenticeship,'' which is defined as ''the office designated by the Employment and Training Administration to administer the National Apprenticeship System or its successor organization.'' This definition would be added in anticipation of any future name changes to the DOL entity responsible for oversight of the National Apprenticeship System. The definition is based on DOL's organizational structure for administration of the National Apprenticeship System.

Proposed § 29.2 adds a new term, ''provisional registration'' which refers to the 1 year provisional approval of a newly registered apprenticeship program. This definition has been added to facilitate compliance with § 29.3(g), through which the Department seeks to ensure that new program sponsors are focused on development of successfully functioning apprenticeship programs.

Further, proposed § 29.2 expands the current definition of ''Registration Agency,'' by listing the primary responsibilities of a registration agency to facilitate compliance with the requirements of this part.

Proposed § 29.2 revises the current definition of ''related instruction,'' by adding ''related technical instruction'' as part of the defined term. The proposed text specifies the methods by which related instruction may be provided and adds distance learning through ''electronic media'' as defined in this section to the instructional methods that traditionally have been used. The revisions are based on the need for clarification of what constitutes related technical instruction and the acceptable methods for delivering related instruction.

Proposed § 29.2 revises the existing definition of ''Secretary'' to mean the Secretary of Labor or any person designated by the Secretary. This revision explains who has authority to implement the revisions of this part.

The Department proposes to revise the definitions for State Apprenticeship Agency and State Apprenticeship Council by separately defining the two entities. ''State Apprenticeship Agency'' is defined as ''an agency of a State government that has responsibility and accountability for apprenticeship within the State.'' The proposed revisions provide that State Apprenticeship Agencies may seek recognition and authority from the Office of Apprenticeship to register and oversee apprenticeship programs and agreements for Federal purposes. The proposed revisions also reflect the Department's view that it is best to recognize only State government entities, in order to ensure accountability for oversight and management of a State's apprenticeship system for Federal purposes.

The Department proposes to separately define ''State Apprenticeship Council'' to help underscore the role a council would play in a State Apprenticeship Agency. The proposed revisions clarify that a State Apprenticeship Council is ineligible for recognition as the State's Registration Agency. The definition is based on the Department's view that it is best to recognize only State government agencies as Registration Agencies. The proposed definition also clarifies that a State Apprenticeship Council operates at the direction and discretion of the State Apprenticeship Agency. Depending on this direction and discretion, a State Apprenticeship Council may provide regulatory or advisory functions for the operation of the State's apprenticeship system.

Proposed § 29.2 adds a definition for ''State office,'' to facilitate compliance with proposed § 29.13(b)(3) and the requirements for recognition of a State Apprenticeship Agency. The definition is based on the need to have a single identified point of contact with whom the Department will conduct the business of the National Apprenticeship System.

Proposed § 29.2 adds a new term, ''supplemental instruction,'' which is defined as ''instruction in non-core related requirements, for example, job site management, leadership, communications, first-aid/CPR, field trips, and new technologies/processes.'' This new definition would facilitate compliance with proposed §§ 29.5(b)(4) and 29.7(e). The Department proposes this definition to make it clear that supplemental instruction focuses on non-core job requirements in response to requests from business, industry, and labor seeking clarification on the difference between related technical instruction and supplemental instruction.

Proposed § 29.2 adds a new term, ''technical assistance,'' to clarify the types of guidance and assistance that Registration Agencies provide to program sponsors for the implementation of this part. This new definition would spell out the guidance that a Registration Agency would provide to help program sponsors comply with the requirements of this part.

Proposed § 29.2 adds a new term, ''transfer,'' which is defined as ''a shift of apprenticeship registration from one program to another, or from one employer within a program to another employer within that same program. Transfer may be initiated either by the

employer, the sponsor, or the apprentice.'' The definition has been added to correspond to the process addressed in proposed § 29.5(b)(13) for the transfer of an apprentice between and within apprenticeship programs. Apprentices' ability to transfer reduces the need for cancellation and re-registration of an apprentice, thereby promoting continuity of participation in apprenticeship.

Eligibility and Procedure for Registration of an Apprenticeship Program (§ 29.3)

Section 29.3 covers the eligibility criteria and procedure for registering a program of apprenticeship. The proposed revisions and additions to § 29.3 update the process by which the Department or a recognized State Apprenticeship Agency determines a program's eligibility for registration and oversees the operations of registered apprenticeship programs. While the substance of the proposed § 29.3 is based largely on the existing rule, some changes are proposed in order to further ensure high quality among all registered apprenticeship programs. Additionally, the revisions will assist program sponsors by providing for early intervention and technical assistance to enable program sponsors to continue their apprenticeship programs. Further, these provisions provide program sponsors with the means to measure apprentice progress and also encourage the development of a closer working relationship between the apprenticeship sponsor and Registration Agency staff.

The Department proposes changes in paragraphs (a), (c), and (f) of proposed § 29.3 to update and clarify terms, which are not intended to change the substance of those paragraphs. Proposed § 29.3(b) is a revised statement of the criteria for apprenticeship program and agreement registration by a Registration Agency, that is substantially the same as the current regulation.

Proposed § 29.3(d) establishes a requirement for the appropriate Registration Agency to be notified within the first 45 days of an apprentice's probationary employment. This is a change from the existing 90-day requirement. Proposed § 29.3(e) would require program sponsors to notify the appropriate Registration Agency within 45 days of the completion of an apprenticeship program and notice to the Registration Agency of transfers and the cancellation or suspension of any apprenticeship agreement with a statement of the reasons therefore. This would be a change to existing § 29.3(e), which simply requires ''prompt'' notice to the ''appropriate registration office.'' The Department proposes these changes to §§ 29.3(d) and 29.3(e) to require specific and consistent timeframes which are intended to enhance the efficiency of the National Apprenticeship System.

Proposed § 29.3(g) is a new provision which establishes provisional approval of 1 year for new programs that the Registration Agency preliminarily determines comply with part 29. The Department would add this paragraph to increase the success rate of new programs by prescribing a review after the first year of program registration. Also, provisional registration would potentially discourage applications from prospective sponsors that do not have a long-term commitment to provide employment and training for registered apprentices.

Proposed § 29.3(h) is another new provision which establishes the process by which a registered program would move beyond provisional approval and provides for subsequent reviews at the completion of the first full training cycle, normally a 5-year period. Proposed paragraphs (g) and (h) are intended to ensure adequate oversight over apprenticeship programs and to further improve quality in the National Apprenticeship System.

Proposed § 29.3(i) addresses the timeframe for processing a sponsor's request for modification of a registered program, to improve customer service and promote consistency across the National Apprenticeship System. The proposed rule would require the Registration Agency to complete action on the request, whether by approving or by rejecting with appropriate guidance, within 45 days of receipt. This would differ from the existing rule, § 29.3(g), which simply provides for ''prompt'' submission of requests for modification and sets no timeframe for response from the Registration Agency and provides no guidance on what the Registration Agency must do to process the application or modification.

Proposed § 29.3(j) would revise the timeframe set by existing § 29.3(h), ''not less than 30 days nor more than 60 days,'' to provide that a union has 45 days to submit comments about a program application proposed by an employer or employers' association, where a union has the right, under a collective bargaining agreement or other instrument, to participate in an apprenticeship program but does not participate in any manner in the operation of substantive matters of the apprenticeship program. This reduced timeframe would further improve efficiency in the program registration process.

Proposed paragraph § 29.3(k) simply carries forward the provisions of existing § 29.3(i), which covers program registration by an employer or group of employers where the employees to be trained do not have a collective bargaining agent, and adds employer associations to the groups that can propose programs for registration.

Criteria for Apprenticeable Occupations (§ 29.4)

Proposed § 29.4 updates the criteria for determining when an occupation qualifies as apprenticeable. Based on over 30 years of experience in implementing the current regulations, the Department proposes to revise the existing introductory language to indicate that apprenticeable occupations are specified by industry, including employers and labor representatives. Changes to paragraphs (a) and (b) align these paragraphs with the proposed format for this section, and are not intended to change the substance of those paragraphs. The proposed revision to § 29.4(c) updates the provision to reflect changes to the means of progression through an apprenticeship program as discussed further in § 29.5(b)(2).

Proposed § 29.4(d) is the same as the current regulation except that it adds ''learning'' after ''training.'' This proposed addition clarifies that registered apprenticeship involves learning subject matter relevant to an occupation, as well as training in that occupation.

Standards of Apprenticeship (§ 29.5)

Proposed § 29.5 updates the existing standards for registered apprenticeship programs to increase the flexibility of requirements for on-the-job learning, and related and supplemental instruction as defined in proposed § 29.2, and provides for granting advanced standing or credit. Existing § 29.5(b)(8), (b)(9), (b)(10) and (b)(14) would be carried forward unchanged and therefore are not being presented for comment. These sections are reprinted below for ease of reference.

The proposed introductory text and paragraph (a) minimally revise the existing provisions for the sake of clarity. Proposed § 29.5(b) outlines the proposed requirements for program standards. Changes to paragraphs (b)(1), (b)(3), (b)(5), (b)(6), (b)(7), (b)(16), and (b)(22) in proposed § 29.5 update language to use current common terms such as ''skilled occupation,'' rather than ''skilled trade;'' and ''must'' rather than ''shall.''

Proposed § 29.5(b)(2), which is based on the existing requirement that work

experience must be consistent with industry practice, presents three methods by which an individual apprentice may progress toward the industry standard for work experience required under § 29.4(c). These methods are: (i) a time-based approach involving completion of at least 2,000 hours of on-the-job work experience; (ii) a competency-based approach involving successful demonstration of acquired skills and knowledge by an apprentice, as verified by the program sponsor; and (iii) a hybrid approach involving completion of a specified minimum number of hours plus the successful demonstration of competency. The time-based approach retains the 2,000-hour minimum of on-the-job work experience set by existing § 29.4(c). In a competency-based approach, a program sponsor would allow an individual apprentice to demonstrate the requisite competencies for an apprenticeable occupation without having to satisfy a minimum number of hours of on-the-job work experience. In a hybrid approach, a program sponsor would provide an opportunity for an individual apprentice to demonstrate requisite competencies for an apprenticeable occupation after having completed a specified minimum number of hours of on-the-job work experience. For example, an apprentice may be required to complete 1,500 hours of on-the-job work experience to attain basic skills and knowledge and then permitted to show the attainment of the required skills and knowledge through demonstrated competencies. The competency-based and hybrid approaches may enable an apprentice to progress through the program in less time than would be required under a time-based approach. Proposed § 29.5(b)(2) will provide greater flexibility for registered apprenticeship programs to address career development plans of registered apprentices. This proposed approach reflects the experience of the traditional building and construction trades and industrial sectors with registered apprenticeship, and addresses the needs of new and emerging industries seeking to participate in the National Apprenticeship System.

Proposed § 29.5(b)(4) allows for related technical instruction to be accomplished through methods such as classroom, occupational or industry courses, electronic media, or other instruction approved by the Registration Agency. Proposed paragraph (b)(4) would also establish requirements for an apprenticeship instructor, which would be similar to States' requirements such as meeting the State Department of Education's requirements for vocational-technical instructor, and/or being recognized as a subject matter expert. It would also require that instructors have training in teaching techniques and adult learning styles. The Department has proposed these changes to further ensure quality in the related technical instruction component of registered apprenticeship by establishing minimum standards for apprenticeship instructors. Proposed paragraph (b)(4) provides flexibility to accommodate variations in the requirements for instructors in different industries and occupations.

Proposed revisions to § 29.5(b)(11) clarify that a written apprenticeship agreement must meet the requirements of the laws and regulations of a recognized Registration Agency.

Proposed § 29.5(b)(12) revises the existing requirements for granting an apprentice advanced standing or credit to include demonstrated competencies. This addition provides greater flexibility for an apprentice to progress through an apprenticeship program. Proposed § 29.5(b)(13) clarifies and revises the existing requirements for transfer of apprentices between apprenticeship program sponsors. While existing paragraph (b)(13) only governs transfers within the same program, the proposed paragraph governs transfers between programs as well.

Proposed paragraph (b)(13)(i) would require the program sponsor or committee to provide the transferring apprentice with a transcript of related training and on-the-job learning completed. This would provide the apprentice with a portable credential that could, for example, enable the apprentice to attain advanced standing or credit under § 29.5(b)(12). Proposed paragraph (b)(13)(ii) permits the transfer to be either to the same or to a related occupation in contrast to the current regulation which only mentions transfer to another employer in the same program. Proposed paragraph (b)(13)(iii) requires the execution of a new apprenticeship agreement. This expansion of transferability provides greater flexibility for apprentices, and is intended to accommodate variations in apprentices' career development plans in which an apprentice may need to transfer between apprenticeship programs, not just within one apprenticeship program.

Proposed § 29.5(b)(15) provides recognition for successful completion of apprenticeship or the attainment of an interim credential. The proposed revisions clarify that a certificate would be issued by a Registration Agency. The provision for interim credential has been added to ensure that apprentices receive credit for attaining particular skills or satisfying certain requirements as they progress in apprenticeship.

Proposed § 29.5(b)(17) clarifies that any modifications or amendments to program standards must be submitted to the Registration Agency for approval.

Proposed § 29.5(b)(18) simply incorporates the proposed term ''Registration Agency'' into the existing requirement for the program sponsor to notify the Registration Agency of apprenticeship completion, transfer, suspension, and cancellation of apprenticeship agreements and makes a few other clarifying changes.

Proposed § 29.5(b)(19) replaces the existing term ''termination'' with a more appropriate term, ''cancellation,'' to describe the cessation of an apprenticeship agreement between an apprentice and program sponsor prior to successful completion or transfer. The term cancellation does not carry the negative connotations associated with termination, and cancellation reflects the more common language. The proposed paragraph also provides that cancellations during an apprentice's probationary period will not adversely impact the sponsor's completion rates. The proposed rule adds this provision in recognition of the fact that apprentices leave apprenticeship programs, particularly during the probationary period, for numerous reasons, many of which have nothing to do with the quality of the apprenticeship program. Excluding such cancellations from the completion rate data is appropriate to avoid stigmatizing programs that happen to have a high attrition rate during the probationary period.

Proposed § 29.5(b)(20) simply consolidates the requirements for compliance with 29 CFR part 30 from the existing § 29.5(b) introductory text and existing § 29.5(b)(20) and provides some clarifying language.

Proposed § 29.5(b)(21) updates the existing requirement for name and address of the appropriate authority to receive, process and make disposition of complaints. The proposed paragraph simply adds telephone number and e-mail address as potential forms of contact information.

Program Performance Standards (§ 29.6)

Proposed § 29.6 is a new provision that would set new requirements for program performance. Proposed § 29.6(a) provides that an apprenticeship program must have at least one registered apprentice in order to be designated and retain designation

as a registered apprenticeship program. This provision reflects the common sense notion that it would be pointless to have a registered program without apprentices.

Proposed § 29.6(b) provides a non-exclusive list of the tools and factors that must be considered in evaluating program performance. In particular, programs will be reviewed based on quality assurance assessments, Equal Employment Opportunity Compliance Reviews, and completion rates. These factors have been specified because they would enable a Registration Agency to develop a fair understanding of program quality. The Department recognizes that other tools and factors may also be useful. Therefore, the proposed provisions in § 29.6(b) are not intended to limit the Registration Agency's discretion to use other factors and tools in addition to those listed.

Proposed § 29.6(c) provides for evaluation of completion rates of programs located in the same geographical areas, and as necessary, further review and provision of technical assistance to maintain and improve program performance. Under proposed § 29.6(d), the cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate. The use of completion rates in program reviews is not intended to limit or terminate existing apprenticeship programs that receive technical assistance from a Registration Agency and demonstrate improved program performance, or to impede prospective apprenticeship program sponsors. Rather, the use of completion rates will focus on strengthening the program outcomes of the National Apprenticeship System. The Office of Apprenticeship will provide guidance to its field staff and to State Apprenticeship Agencies about establishing bench marks for completion rates for use in program reviews as proposed in this section. Such guidance will enable the Registration Agency to use appropriate data in formulating bench marks, incorporate analysis of relevant data in program reviews, and provide technical assistance. While every reasonable effort will be made to improve program performance, the Department contemplates that a program that demonstrates persistent deficiencies will be proposed for deregistration under § 29.8 of this part. This approach will maximize program sponsors' ability to improve program performance. These provisions will ensure program quality and accountability in the National Apprenticeship System.

Apprenticeship Agreement (§ 29.7)

Proposed § 29.7, which is based on existing § 29.6, sets the requirements for apprenticeship agreements. An apprenticeship agreement, as defined in § 29.2, is the written agreement between an apprentice and either the apprentice's program sponsor or committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice. Except for proposed paragraphs (b), (e), and (j), the changes simply update terminology and do not alter the existing requirements.

Proposed § 29.7(b) carries forward the existing requirement that the agreement include the apprentice's date of birth and adds provision for a space on the agreement in which apprentices would voluntarily provide their Social Security Number. The Registration Agency will use apprentices' Social Security Numbers for performance management and Davis Bacon Act purposes; in particular, for use in calculating employment outcomes of the National Apprenticeship System as defined in the Department's common measures for Federal job training programs. The Office of Management and Budget (OMB) has approved the request for Social Security Number information on an apprenticeship agreement (OMB Control Number 1205–0223).

Proposed § 29.7(e) updates the Apprenticeship Agreement to accommodate the information about the approach to apprenticeship progression (either time-based approach, competency-based approach, or hybrid approach, as defined in § 29.5(b)(2)) that the apprenticeship sponsor has selected. The Department proposes to carry forward the existing requirement about the number of hours to be spent in related technical and supplemental instruction. The number of hours of related instruction specified in an Apprenticeship Agreement is unaffected by the approach to progression through an apprenticeship program chosen by the sponsor.

Proposed § 29.7(j) carries forward existing requirements regarding equal opportunity in all phases of apprenticeship employment and training.

Deregistration of a Registered Program (§ 29.8)

Proposed § 29.8 clarifies the existing § 29.7 provisions for deregistration of registered apprenticeship programs. The existing regulation refers to ''Bureau [Office of Apprenticeship] registered programs.'' References to the Federal registration agency have been removed to make it clear that the section applies to registrations with all Registration Agencies. In addition, we propose to delete the phrase ''but not limited to'' in the introductory language to proposed § 29.8(a) because it contributes nothing to the meaning of the paragraph. Proposed § 29.8(a) also replaces the term ''registration officer'' with the term ''Registration Agency'' and establishes a requirement for sponsors whose program has been deregistered to refer all impacted apprentices to the Registration Agency for information about potential transfer to other registered apprenticeship programs. Proposed paragraphs 29.8(b)(1) through (b)(8) outline deregistration by the Registration Agency based upon reasonable cause.

Additionally, proposed § 29.8(b)(7) shifts Departmental decision making and action from the Secretary to the Administrator of the Office of Apprenticeship, the Office of Administrative Law Judges (OALJ) and the Administrative Review Board (ARB). The proposed revisions, which are consistent with revisions in proposed §§ 29.10 and 29.13, implement Secretary's Order 1–2002, 67 FR 64272, Oct. 17, 2002.

Reinstatement of Program Registration (§ 29.9)

Proposed § 29.9 is revised to provide that requests for reinstatement must be filed with and decided by the Registration Agency.

Hearings (§ 29.10)

Proposed § 29.10 would institute a new procedure for appeals of deregistration decisions more in line with current practice at DOL. As noted in the discussion of § 29.8, this procedure shifts Departmental decision making and action from the Secretary to the Administrator of the Office of Apprenticeship, the OALJ and the ARB. The proposed revisions implement Secretary's Order 1–2002, 67 FR 64272, Oct. 17, 2002.

Under proposed § 29.10(a), requests for hearing will be sent to the Administrator who will forward them to the OALJ. The OALJ will assign an Administrative Law Judge (ALJ) to hear the case. The ALJ will issue a notice of hearing. Under proposed § 29.10(b), the ALJ would generally govern the hearing under the OALJ's rules of procedure in 29 CFR part 18. Under proposed § 29.10(c), discretionary appeals to the ARB would be available to any party dissatisfied with the ALJ's decision. The request for appeal must be filed within 15 days and must specify the parts of

the decision to which exception is taken. The ARB must decide whether to accept the appeal within 30 days, and must issue its decision within 180 days after the close of the record.

Limitations (§ 29.11) and Complaints (§ 29.12)

All modifications in these sections are changes to language that simply harmonize these sections with provisions and language updates discussed in other sections.

Recognition of State Apprenticeship Agencies (§ 29.13)

Proposed § 29.13 would revise the provisions (in current § 29.12) that address the recognition of State Apprenticeship Agencies for Federal purposes. These proposed revisions clarify how the Office of Apprenticeship oversees the National Apprenticeship System.

Proposed § 29.13(a) differs significantly from the existing regulation (§ 29.12(a)), in that it does not include State Apprenticeship Councils as entities eligible for recognition. Proposed § 29.13(a) provides that the Department will ''recognize'' a State Apprenticeship Agency which complies with the specified requirements, granting that agency authority to register apprenticeship programs and apprentices for Federal purposes. The Department has proposed this change to ensure that the governmental entity to be held accountable for conformity with part 29 is clearly identified. Current regulations do not specify that a recognized Registration Agency must be a government entity. Proposed § 29.13(a) clarifies this requirement and further aligns the proposed regulations for the National Apprenticeship System with the National Apprenticeship Act, which states that the Department is to ''cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship.''

Additionally, proposed § 29.13(a) provides that the Department's recognition of State Apprenticeship Agency confers ''non-exclusive authority'' to determine whether an apprenticeship program meets published standards and is eligible for those Federal purposes which require such a determination. With this provision and corresponding language in proposed § 29.13(j), the Department retains full authority to register programs and apprentices located in all States and Territories where the Office of Apprenticeship has determined such action is necessary to further the interests of the National Apprenticeship System. These provisions clarify the Department's interpretation of the existing rule and codify existing practice. The Department has long used its authority to register apprenticeship programs in Federal enclaves and has stepped in to register programs when a State Apprenticeship Agency has been unable to timely register apprenticeship programs.

Proposed § 29.13(a)(2) consolidates the provisions related to the State Apprenticeship Councils from existing § 29.12(a)(2) and § 29.12(b)(2). Proposed § 29.13(b)(2) also deletes language in the existing regulation § 29.12(b)(2) regarding voting procedures in a State Apprenticeship Council. These deletions are proposed because, under the proposed new rule under which only State government agencies will be recognized as State Apprenticeship Agencies, issues pertaining to State Apprenticeship Councils are under the direction and the discretion of the State Apprenticeship Agency, and are no longer appropriate matters for the Department to direct through the requirements of this part. Proposed § 29.13(a)(3) through (a)(5) carry forward existing provisions in § 29.12(a)(3) through (a)(5).

Proposed § 29.13(a)(6) establishes a new requirement for the State Apprenticeship Agency to integrate registered apprenticeship into the State's economic development strategies and public workforce investment system. Such integration would further the National Apprenticeship Act mandate to bring together employers and labor for the formulation of programs of apprenticeship. Through increased coordination, State Apprenticeship Agencies can promote registered apprenticeship to a broader audience and further expand apprenticeship into high growth, high demand occupations. This effort would promote registered apprenticeship as a critical post-secondary education, training, and employment option available through the One Stop Career Center system.

Proposed § 29.13(b) further clarifies basic requirements for the Department's recognition of a State Apprenticeship Agency. Proposed paragraph (b)(2) requires that State Apprenticeship Agencies provide sufficient budget and staff to carry out the functions of a Registration Agency. The Department is adding this provision to ensure that if a State that wishes to undertake the responsibilities required of a State Apprenticeship Agency, it must be prepared to commit the resources necessary to carry out those responsibilities. Currently, some State Apprenticeship Agencies depend completely on DOL staff to maintain registered apprenticeship functions in their States. Under the proposed rule, a State that seeks the authority to register apprenticeship programs and apprentices, for Federal purposes, within its jurisdiction, must assume corresponding responsibilities. The proposed rule deletes existing § 29.12(b)(1) language that prescribes the location of a State Apprenticeship Agency and subsumes existing § 29.12(b)(4), which requires the State to designate the entity responsible for registration and deregistration. This proposed deletion would increase States' flexibility to determine where within the State government the State Apprenticeship Agency authority resides.

Proposed § 29.13(b)(3) includes a new requirement to delineate powers and duties of the State Apprenticeship Agency, in addition to those of the State office and State Apprenticeship Council. Proposed § 29.13(b)(4) restates the corresponding provisions of existing § 29.12(b)(5). Proposed § 29.13(b)(5) effectively restates the corresponding provisions of existing § 29.12(b)(6).

Proposed § 29.13(b)(6) revises the existing provisions in § 29.12(b)(7) for registration of apprenticeship programs to emphasize occupations in high growth and high demand occupations. This provision aligns with the Department's focus on addressing industry demands, particularly in high growth occupations.

Proposed § 29.13(b)(7) expands the provisions of existing § 29.12(b)(8), which currently provide for reciprocal recognition for programs and standards other than in the building and construction trades. The proposed revision would cover all registered apprentices, apprenticeship programs, and standards, with no exceptions, for Federal purposes. This would enable apprentices registered in one State to work as registered apprentices in other States, if their apprenticeship program sponsor requests reciprocal recognition for Federal purposes from the Registration Agency. This proposed expansion promotes the National Apprenticeship Act's requirement for the furtherance of labor standards necessary to safeguard the welfare of apprentices. Additionally, this expansion of reciprocity will enable the National Apprenticeship System to further address the needs of businesses and labor, while maintaining high quality standards for apprenticeship programs.

Proposed § 29.13(b)(8) carries forward the provisions of current § 29.12(b)(9)

with regard to cancellation of programs and apprenticeship agreements.

Proposed § 29.13(b)(9) is a new provision that has been added to clarify requirements for State Apprenticeship Agencies to submit proposed modifications in the State's apprenticeship legislation, regulations, policies, and/or operational procedures for Departmental review and approval prior to implementation for conformity with the National Apprenticeship Act and the implementing regulations in 29 CFR parts 29 and 30. The State Apprenticeship Agency's submission of proposed legislation, regulations, policies and/or operational procedures will enable the Department to identify and take action to resolve concerns.

The proposed rule deletes existing § 29.12(b)(10) because this requirement for employers to consult with collective bargaining agents about proposed unilateral apprenticeship program duplicates existing § 29.3(h), which is being carried forward as proposed § 29.3(j).

The proposed language implements the Department's authority to administer the National Apprenticeship System. The current regulations could be interpreted to permit States to change their laws and practices after approval of their applications, without the Department's review and approval. Such an interpretation could lead to a situation in which a State Apprenticeship Agency violated 29 CFR part 29 without consequences. This was never the Department's intent. The proposed provision clarifies that to be recognized as a State Apprenticeship Agency, a State's law and procedures must conform with part 29, initially, and must continue to comply with those requirements.

Proposed § 29.13(c), which is based on existing § 29.12(c), addresses the process by which State Apprenticeship Agencies apply for recognition from the Department. State Apprenticeship Agencies recognized by the Department under current regulations would be required to reapply for recognition within 1 year from effective date of the final rule. This shift furthers the Department's efforts to ensure continuing conformity with part 29, and effectuates the Department's authority to administer the National Apprenticeship System under the National Apprenticeship Act.

Proposed § 29.13(d) is a new provision that establishes a 5-year period for recognition of a State Apprenticeship Agency by the Department and provides a process for renewal and maintenance of recognition. This provision has been added to ensure consistency and quality across the National Apprenticeship System. The existing regulations confer open-ended recognition on State Apprenticeship Agencies for Federal purposes and do not clearly specify that a State Apprenticeship Agency must continue to meet regulatory requirements for continued recognition. In the Department's view, a 5-year period provides a reasonable level of continuity for State Apprenticeship Agencies, while providing an efficient way to ensure that State Apprenticeship Agencies remain in conformity with Federal requirements.

Proposed § 29.13(e) is a new provision that addresses Departmental review and monitoring of Registration Agencies for compliance with the requirements of this part. This provision would effectuate the Department's authority to administer the National Apprenticeship System. The requirements of proposed paragraph (e), which provide for on-site review; self-assessment; and monitoring of the State's apprenticeship law and procedures, simply codify the Department's existing procedures for determining if State Apprenticeship Agencies are complying with part 29. The monitoring and reviews outlined in this proposed approach would form the basis for the Office of Apprenticeship's decision whether to continue recognition every 5 years.

Proposed § 29.13(f) is a new provision that would provide for the steps to be taken if a State Apprenticeship Agency is found to be out of compliance with part 29. These provisions are based on the Department's current practice of compliance assistance. Those practices include the provision of technical assistance, and, where problems are found, conferral of ''Conditional Recognition'' for 45 days during which the State Apprenticeship Agency must submit a corrective action plan to remedy the conforming activity for failure to maintain compliance. These proposed procedures are necessary to ensure that non-conformity with part 29 is detected and addressed expeditiously.

Proposed § 29.13(g), which is based on existing § 29.12(d), simplifies and clarifies the process for determining whether to deny a State Apprenticeship Agency recognition and provides the procedures for appeal of that decision. The proposed new procedure provides for a direct appeal by the State Apprenticeship Agency to the OALJ, for a hearing before an ALJ which will result in a recommended decision, with a final decision by the ARB. The hearing will be governed by the OALJ procedural rules in 29 CFR part 18 with some exception to ensure the reception of documentary evidence and to relax the application of formal rules of evidence.

Proposed § 29.13(h), which is based on existing § 29.12(e), carries forward the requirements for conformity with pertinent law and the Office of Apprenticeship registration of apprenticeship programs and apprentices under certain conditions.

Proposed § 29.13(i) is a new provision which provides a process and procedure for a State to voluntarily relinquish its authority to administer registered apprenticeship for Federal purposes. This new section clarifies the Department's requirements for States seeking to transition administration of registered apprenticeship for Federal purposes from a State Apprenticeship Agency to the Office of Apprenticeship. These requirements include submitting a formal notice of intent, timely provision of all original, pertinent documents, and full cooperation during any transition period. These provisions would ensure smooth, seamless continuity of operations in the National Apprenticeship System, and further support the Department in fulfilling its obligations and responsibilities to registered apprentices and program sponsors. The proposed requirements in § 29.13(i)(2) and (3) are identical to the corresponding provisions in proposed § 29.14(h), which sets the requirements for transition when the Department has withdrawn recognition.

Proposed § 29.13(j) provides that the Department retains full authority to register apprenticeship programs and apprentices, for Federal purposes, in all States and Territories where the Office of Apprenticeship determines that such action is necessary to further the interests of the National Apprenticeship System. This new provision clarifies that the Department's granting of recognition to a State Apprenticeship Agency does not confer exclusive authority to register apprenticeship programs and apprentices for Federal purposes in that State. The Department has determined that this clarification is necessary to ensure that all current and potential program sponsors seeking to participate in the National Apprenticeship System have full access to a Registration Agency regardless of their geographic location. Further, this clarification codifies the Office of Apprenticeship's existing practice. When State Apprenticeship Agencies have unreasonably delayed or denied registration to apprenticeship programs that meet the criteria established in this part, the Department has used its authority to register such apprenticeship programs for Federal purposes. The

National Apprenticeship Act and § 29.1, ''Purpose and scope,'' of the existing regulations provide the Office of Apprenticeship the authority to register apprenticeship programs and apprentices for Federal purposes, as defined in existing regulations at § 29.2.

Derecognition of State Agencies (§ 29.14)

The Department also proposes to revise the provisions for derecognition of State Apprenticeship Agencies (existing § 29.13, proposed § 29.14) to further enhance the Department's oversight of the National Apprenticeship System. Proposed paragraphs (a), and (b), of proposed § 29.14 carry forward existing procedures used under the current regulations and incorporate the updated term ''Office of Apprenticeship.''

Proposed § 29.14(c) clarifies how the Department will proceed with derecognition, depending on how the State Apprenticeship Agency responds to the notice issued under proposed § 29.14(b). Proposed paragraph (c)(1) provides for suspension of the derecognition process, if the Office of Apprenticeship determines that the State Apprenticeship Agency has sufficiently specified proposed remedial actions and committed the State to remedying identified deficiencies. Proposed paragraph (c)(1)(i) provides for termination of derecognition proceedings, if the Office of Apprenticeship determines that the State's corrective action has addressed the identified concerns. Proposed paragraph (c)(1)(ii) provides the Administrator must issue a notice proposing derecognition and offering the opportunity for a hearing if the Administrator finds that the corrective action has failed to remedy the identified concerns.

Proposed paragraphs (c)(2) and (3) provide a new procedure from existing § 29.13(c)(2). Proposed paragraph (c)(2) provides that, where the State Apprenticeship Agency fails to either comply with the notice issued under § 29.14(b) or request a hearing, the Administrator must take the steps described in § 29.14(d), (e), (f), and (g) to assume control of registration in the State for Federal purposes and to transfer State registered programs to Federal registration.

Proposed paragraph (c)(3) adopts the hearing and appeal procedures of § 29.13(g) to govern the hearing, leading to a final decision by the ARB. In particular, this paragraph specifies the use of an ALJ to develop proposed findings and a recommended decision that would be referred to the ARB for final decision. As provided under Secretary's Order 1–2002, 67 FR 64272, Oct. 17, 2002, paragraph (a)(25), the Secretary has delegated the authority to review and make final decisions on administrative adjudication regarding the National Apprenticeship Act to the ARB. Therefore, the final decision on derecognition would be issued by the ARB.

Proposed § 29.14(d) and (e) carries forward the procedures for transferring the registration of apprenticeship programs from State to Federal registration under existing § 29.13(d). Proposed paragraphs (d)(1) and (d)(2) present the notice requirements with which the Office Apprenticeship must comply. Proposed paragraph (e) carries forward the existing provisions that enable apprenticeship program sponsors impacted by State Apprenticeship Agency derecognition to request registration with the Office of Apprenticeship.

Proposed § 29.14(f) carries forward existing provisions in § 29.13(e) that address the situation where a sponsor fails to request registration with the Office of Apprenticeship. Proposed § 29.14(g) carries forward existing provisions in § 29.13(f) that require sponsors to notify apprentices of the impact of derecognition for Federal purposes, and imposes a new requirement on sponsors to refer all apprentices to the Office of Apprenticeship for information about potential transfer to other registered apprenticeship programs.

Proposed § 29.14(h) would establish requirements for a State Apprenticeship Agency whose recognition has been withdrawn for Federal purposes to provide all documents relating to the State's apprenticeship programs to the Department and to cooperate fully during the transition period. The proposed requirements are identical to the corresponding provisions in proposed § 29.13(i)(2) and (3).

Proposed § 29.14(i) carries forward the existing § 29.13(g) provisions that address the circumstances in which a derecognized State Apprenticeship Agency may regain recognition. The State Apprentice Agency would have to establish, to the satisfaction of the Office of Apprenticeship, that the State Apprenticeship Agency has remedied the non-conformity that led to derecognition, has cooperated with the Office of Apprenticeship in the transfer process, and is otherwise operating in compliance with part 29.

III. Administrative Requirements for the Proposed Rulemaking

Executive Order (E.O.) 12866

This proposed rule to revise 29 CFR part 29 is not economically significant because it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; or adversely affect 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 any material way. However, the proposed rule is a significant regulatory action under E.O. 12866 at § 3(f) because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. This proposed rule updates existing regulations. Therefore, the Department has submitted this proposed rule to the OMB for review.

Paperwork Reduction Act (PRA)

Registration of apprentices described in this proposed rule contains requirements for Registered Apprenticeship Program Sponsors and apprentices to submit Apprenticeship Agreement forms to DOL or to the appropriate State Registration Agency. These requirements were previously reviewed and approved for use by OMB under 29 U.S.C. 50 and 29 CFR 29.1, and assigned OMB control number 1205–0223 under the provisions of the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 Additionally, in accordance with the PRA, OMB has approved the Department's information collection request for the Apprenticeship Agreement at proposed § 29.7, including the apprentice's Social Security Number (OMB Control Number 1205–0223). The Department has determined that this proposed rule contains no new information collection requirements, nor that any of these requirements are substantively or materially modified by the proposed changes contained herein.

Executive Order 13132: Federalism

The Department has reviewed this proposed rule in accordance with E.O. 13132 and found it may have Federalism implications because it may have substantial direct effects on States and on the relationship between the National government and the States. In particular, the proposed rule may affect internal State organizational structures with regard to State Apprenticeship Agencies and State Apprenticeship Councils and it extends the requirements for reciprocal approval of

programs registered in other States. However, in developing these regulations, the Department undertook to consult with representatives of affected State officials, and the resulting proposed rule has been drafted to meet the concerns of such officials.

In the development of the proposed rule the Department included several mechanisms for consultation with State officials. The Department relied upon advice from the ACA, and consultation with State apprenticeship agencies and the NASTAD, the organization representing apprenticeship officials from the District of Columbia, 27 States, and three Territories. The ACA, which contains representatives of two associations of State labor and apprenticeship officials (including NASTAD), offered specific suggestions on matters relating to apprenticeship program standards, and registration and deregistration of apprenticeship programs. Upon consideration of the ACA's advice, the Department ultimately agreed with the ACA's recommendations and has incorporated them into the proposed rule.

The Department has consulted with NASTAD on provisions that more directly affect States and the relationship between the National government and the States. In response to a request from the Office of Apprenticeship, the President of NASTAD submitted a letter on behalf of NASTAD membership in December 2006, outlining recommendations for changes to regulations governing the recognition of State agencies to register apprenticeship programs for Federal purposes. In February 2007, Office of Apprenticeship personnel attended a NASTAD meeting to discuss and obtain feedback from NASTAD members on proposed revisions to this part.

As a result of this consultation, NASTAD identified concerns pertaining to six specific areas:

(a) State Apprenticeship Councils should be established within State Apprenticeship Agencies as provided under State law, and the director of the State Apprenticeship Agency should be empowered to implement approved State apprenticeship law and regulations in compliance with 29 CFR part 29;

(b) State Apprenticeship Councils should be composed of persons who are directly associated with registered apprenticeship, should be comprised of an equal number of employee and employer representatives, and should include public representatives in numbers not exceeding the number of employee or employer representatives;

(c) Apprenticeship program sponsors registered in one State that seek reciprocal recognition in another State must abide by the policies, procedures, legislation, and regulations of the State in which they are seeking registration;

(d) The appropriate term for the entity applying for recognition from the Department is ''State Agency'' and not the State Council;

(e) The title of the DOL entity responsible for oversight of the National Apprenticeship System should be changed to its current name, ''Office of Apprenticeship;'' and

(f) A State Apprenticeship Agency's recognition status should not be affected by revisions to this part.

The Department considered this input in developing the proposed rule, and has adopted most of NASTAD's recommendations. For example, the NPRM provides that the State Apprenticeship Agency must establish a State Apprenticeship Council and that only a State Apprenticeship Agency can exercise the authority of a Registration Agency. Further, the Department construes NASTAD's recommendations for the composition of a State Apprenticeship Council as supportive of the existing requirements in § 29.12(b)(2), carried forward in proposed § 29.13(a)(2). In addition, proposed § 29.13(b)(7) expands the existing reciprocity requirement (§ 29.12(b)(8)), which applies only to programs other than those for the building and construction trades, while taking into account NASTAD's concern that out-of-State programs comply with the law of the States where they are seeking reciprocity. Indeed, proposed § 29.13(b)(7) simply requires a State Registration Agency to acknowledge that a particular program is, in fact, registered for Federal purposes. The State Registration Agency would retain the authority to enforce its State labor law, such as the provisions covering apprentice wage rates. Therefore, employers using apprentices registered by other State Registration Agencies would not gain a competitive advantage over in-State employers. Moreover, the Department adopted NASTAD's recommendations and has proposed to replace outmoded references with references to the ''Office of Apprenticeship'' and the ''State Apprenticeship Agency.''

While the Department considered NASTAD's recommendation that a State Apprenticeship Agency's recognition status should not be affected by revisions to this part, it determined that the interest in continuity was outweighed by the national interest in further aligning the National Apprenticeship System with the significant changes in the economy and the workforce that have occurred in the 30 years since regulations for registered apprenticeship were first promulgated. Therefore, in order to fulfill the Department's responsibility to safeguard the welfare of apprenticeship and to promote apprenticeship opportunity, each currently recognized State will be required to update its policies and procedures in accordance with the revisions to this part in order to maintain recognition.

In order to further a smooth transition, proposed § 29.13(c) provides that the recognition of currently recognized State Apprenticeship Agencies would continue for at least 1 year from the effective date of the final rule and outlines the process for State Apprenticeship Agencies to apply for recognition under the revised rule. Therefore, the Department has allowed currently recognized State Apprenticeship Agencies sufficient time to achieve compliance.

Separately, NASTAD recommended non-substantive revisions to the requirement (existing § 29.12(b)(10)) for employers to consult with collective bargaining agents about proposed unilateral apprenticeship programs. Under the proposed rule, existing § 29.12(b)(10) will be deleted because it duplicates existing § 29.3(h), which is being carried forward as proposed § 29.3(j). The Department considered, but did not adopt, the wording changes suggested by NASTAD in proposed § 29.3(j).

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 at 2 U.S.C. 1531 and E.O. 12875. The Department has determined that this rule does not include any Federal mandate that may result in increased expenditures by State, local or tribal governments, in the aggregate, or the by private sector, of $100 million or more in any 1 year. Accordingly, the Department has not prepared a budgetary impact statement.

Assessment of Federal Regulations and Policies on Families

The Department certifies that this proposed rule has been assessed according to section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the Nation's families. Rather, it should have a positive effect by safeguarding the welfare of registered apprentices.

Regulatory Flexibility Act (RFA)/Small Business Regulatory Enforcement Act of 1996 (SBREFA)

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the 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'' have a significant economic impact on a substantial number of small entities. 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 or individuals.

The rule revises and updates procedures for labor standards for registered apprenticeship programs administered by the States and the Department and not by 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 SBREFA. 5 U.S.C. 804. Under section 804 of SBREFA, a major rule is one that is an ''economically significant regulatory action'' within the meaning of E.O. 12866. Because this proposed rule is not economically significant under E.O. 12866, we certify that it also is not a major rule under SBREFA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with E.O. 13175 and has determined that it does not have ''tribal implications.'' The proposed rule does not ''have substantial direct effects 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.''

Executive Order 12988: Civil Justice

This proposed rule has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The proposed rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17.201.

List of Subjects in 29 CFR Part 29

Apprentice agreement and complaints, Apprenticeability criteria, Program standards, registration and deregistration, Sponsor eligibility, State Apprenticeship Agency recognition and derecognition.

Signed at Washington, DC, on December 10, 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

For reasons stated in the preamble, the Department of Labor proposes to revise 29 CFR part 29 to read as follows:

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

Sec.
29.1 Purpose and scope.
29.2 Definitions.
29.3 Eligibility and procedure for registration of an apprenticeship program.
29.4 Criteria for apprenticeable occupations.
29.5 Standards of apprenticeship.
29.6 Program performance standards.
29.7 Apprenticeship agreement.
29.8 Deregistration of a registered program.
29.9 Reinstatement of program registration.
29.10 Hearings for deregistration.
29.11 Limitations.
29.12 Complaints.
29.13 Recognition of State apprenticeship agencies.
29.14 Derecognition of State apprenticeship agencies.

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534)

§ 29.1 Purpose and scope.

(a) The National Apprenticeship Act of 1937, section 1 (29 U.S.C. 50), authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the office of Education under the Department of Health, Education, and Welfare * * *.'' Section 2 of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship'', and to ''appoint national advisory committees * * *.'' (29 U.S.C. 50a)

(b) The purpose of this part is to set forth labor standards to safeguard the welfare of apprentices, promote apprenticeship opportunity, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. These labor standards, policies and procedures cover the registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as an authorized agency for registering apprenticeship programs for certain Federal purposes; and matters relating thereto.

§ 29.2 Definitions.

Administrator means the Administrator of the Office of Apprenticeship, or any person specifically designated by the Administrator.

Apprentice means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in § 29.4 under standards of apprenticeship fulfilling the requirements of § 29.5.

Apprenticeship Agreement means a written agreement, complying with § 29.7, between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice.

Apprenticeship Committee (Committee) means, those persons designated by the sponsor to act as an agent for the sponsor in the administration of the program. A committee may be either joint or non-joint, as follows:

(1) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s).

(2) A non-joint committee which may also be known as a unilateral or group non-joint (may include workers) committee has employer representatives but does not have a bona fide collective bargaining agent as a participant.

Apprenticeship Program means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR parts 29 and 30, including such matters as the requirement for a written apprenticeship agreement.

Cancellation means the termination of the registration or approval status of a program at the request of the sponsor or termination of an Apprenticeship Agreement at the request of the apprentice.

Certification or Certificate means documentary evidence that:

(1) The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, for policy or guideline use by local affiliates, as conforming to the standards of apprenticeship set forth in § 29.5;

(2) A Registration Agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

(3) A Registration Agency has registered an apprenticeship program as evidenced by a Certificate of Registration or other written indicia;

(4) A Registration Agency has determined that an apprentice has successfully met the requirements to receive an interim credential; or

(5) A Registration Agency has determined that an individual has successfully completed apprenticeship.

Competency means the attainment of manual or technical skills and knowledge, as specified by an occupational standard.

Department means the U.S. Department of Labor.

Electronic media means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes, but is not limited to, electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media and/or interactive distance learning.

Employer means any person or organization employing an apprentice whether or not such person or organization is a party to an Apprenticeship Agreement with the apprentice.

Federal Purposes includes any Federal contract, grant, agreement or arrangement dealing with apprenticeship; and any Federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

Interim credential means a credential issued by the Registration Agency, upon request of the appropriate sponsor, as certification of competency attainment by an apprentice.

Journeyworker means a worker who has attained a level of skill and competency recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience, and formal training.)

Office of Apprenticeship means the office designated by the Employment and Training Administration to administer the National Apprenticeship System or its successor organization.

Provisional registration means the 1-year provisional approval of newly registered programs after which program approval may be made permanent, continued as provisional, or rescinded following a review by the Registration Agency.

Registration Agency means the Office of Apprenticeship or a recognized State Apprenticeship Agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR parts 29 and 30 and quality assurance assessments.

Registration of an apprenticeship agreement means the acceptance and recording of an apprenticeship agreement by the Office of Apprenticeship or a recognized State Apprenticeship Agency as evidence of the apprentice's participation in a particular registered apprenticeship program.

Registration of an apprenticeship program means the acceptance and recording of such program by the Office of Apprenticeship, or registration and/or approval by a recognized State Apprenticeship Agency, as meeting the basic standards and requirements of the Department for approval of such program for Federal purposes. Approval is evidenced by a Certificate of Registration or other written indicia.

Related instruction or related technical instruction means an organized and systematic form of instruction designed to provide the apprentice with the core knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom through occupational or industrial courses, or by correspondence courses of equivalent value, or electronic media, or other forms of self-study approved by the Registration Agency.

Secretary means the Secretary of Labor or any person designated by the Secretary.

Sponsor means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

State means any of the 50 States of the United States, the District of Columbia, or any Territory or possession of the United States.

State Apprenticeship Agency means an agency of a State government that has responsibility and accountability for apprenticeship within the State. Only a State Apprenticeship Agency may seek recognition by the Office of Apprenticeship as an agency which has been properly constituted under an acceptable law or Executive order, and authorized by the Office of Apprenticeship to register and oversee apprenticeship programs and agreements for Federal purposes.

State Apprenticeship Council is an entity established to assist the State Apprenticeship Agency. A State Apprenticeship Council is ineligible for recognition as the State's Registration Agency. A regulatory State Apprenticeship Council may promulgate apprenticeship law at the direction of the State Apprenticeship Agency. An advisory State Apprenticeship Council provides advice and guidance to the State Apprenticeship Agency on the operation of the State's apprenticeship system.

State office means that individual office or division of State government designated as the point of contact for the State Apprenticeship Agency

Supplemental instruction means instruction in non-core related requirements, for example, job site management, leadership, communications, first-aid/CPR, field trips, and new technologies/processes.

Technical assistance means guidance provided by Registration Agency staff in the development, revision, amendment, or processing of a potential or current program sponsor's Standards of Apprenticeship, Apprenticeship Agreements, or advice or consultation with a program sponsor to further compliance with this part or guidance from the Office of Apprenticeship to a State Apprenticeship Agency on how to remedy nonconformity with this part.

Transfer means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within that same program. Transfer may be initiated either by the employer, the sponsor or the apprentice.

§ 29.3 Eligibility and procedure for registration of an apprenticeship program.

(a) Eligibility for registration of an apprenticeship program for various Federal purposes is conditioned upon a program's conformity with the apprenticeship program standards published in this part. For a program to be determined by the Secretary as being in conformity with these published standards the program must apply for registration and be registered with the Office of Apprenticeship or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. The determination by the Secretary that the program meets the apprenticeship program standards is effectuated only through such registration.

(b) Only an apprenticeship program or agreement that meets the following criteria is eligible for Office of Apprenticeship or State Apprenticeship Agency registration:

(1) It is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in § 29.4 of this part, and

(2) It is in conformity with the requirements of the Department's regulation on ''Equal Employment Opportunity in Apprenticeship and Training'' in 29 CFR part 30, as amended.

(c) Except as provided under paragraph (d) of this section, apprentices must be individually registered under a registered program. Such individual registration may be effected:

(1) By filing copies of each individual apprenticeship agreement with the Registration Agency; or

(2) Subject to prior Office of Apprenticeship or recognized State Apprenticeship Agency approval, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(d) The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the Office of Apprenticeship or a recognized State Apprenticeship Agency, if not individually registered under such program, must be submitted within 45 days of employment to the Office of Apprenticeship or State Apprenticeship Agency for certification to establish the apprentice as eligible for such probationary employment.

(e) The appropriate Registration Agency must be notified within 45 days of persons who have successfully completed apprenticeship programs; and of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefor.

(f) Operating apprenticeship programs, when approved by the Office of Apprenticeship are accorded registration evidenced by a Certificate of Registration. Programs approved by recognized State Apprenticeship Agencies must be accorded registration and/or approval evidenced by a similar certificate or other written indicia. When approved by the Office of Apprenticeship, National Apprenticeship Guideline Standards for policy or guidance will be accorded a certificate.

(g) Applications for new programs that the Registration Agency preliminarily determines comply with this part must be given provisional approval for a period of 1 year. All new programs must be reviewed for quality and for conformity with the requirements of this part at the end of the first year and the findings must be filed with the Registration Agency. Programs not in operation or not conforming to regulations during the provisional approval period, must be recommended to the Registration Agency for deregistration procedures. After the initial review, all programs not recommended for deregistration will continue to be provisionally approved and must be reviewed for quality and for conformity with the requirements of this part at the completion of the first full training cycle.

(h) A satisfactory review at the end of the first full training cycle will result in the removal of provisional approval. Subsequent reviews will be normally completed on a 5 year cycle. Programs not in operation or not conforming to regulations during the first full training cycle must be recommended to the Registration Agency for deregistration procedures.

(i) Any sponsor proposals or applications for modification(s) or change(s) to registered programs or certified National Guidelines for Apprenticeship Standards must be submitted to the Registration Agency. The Registration Agency must make a determination on whether to approve such submissions within 45 days from the date of receipt. If approved, the modification(s) or change(s) will be recorded and acknowledged within 45 days as an amendment to such program. If not approved, the sponsor must be notified of the disapproval and provided the appropriate technical assistance.

(j) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument, provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association must simultaneously furnish to the existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The Registration Agency must provide for receipt of union comments, if any, within 45 days before final action on the application for registration and/or approval.

(k) Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer or group of employers, or an employer association.

§ 29.4 Criteria for apprenticeable occupations.

An apprenticeable occupation is one which is specified by industry and which must:

(a) Involve skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised training.

(b) Be clearly identified and commonly recognized throughout an industry.

(c) Involve the progressive attainment of manual, mechanical or technical skills and knowledge which, in accordance with the industry standard for the occupation, requires the completion of at least 2,000 hours of on-the-job work experience to attain.

(d) Require related instruction to supplement the on-the-job training/learning.

§ 29.5 Standards of apprenticeship.

An apprenticeship program, to be eligible for approval and registration by a Registration Agency, must conform to the following standards:

(a) The program must have an organized, written plan (program standards) embodying the terms and conditions of employment, training, and supervision of one or more apprentices

in an apprenticeable occupation, as defined in this part, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(b) The program standards must contain provisions that address:

(1) The employment and training of the apprentice in a skilled occupation.

(2) The term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job work experience (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).

(i) The time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job experience as described in work process schedule.

(ii) The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor.

(iii) The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job work experience and the successful demonstration of competency as described in a work process schedule.

(3) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process.

(4) Provision for organized, related and supplemental instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through such media as: Classroom, occupational or industry courses, electronic media, or other instruction approved by the administering Registration Agency. All apprenticeship instructors must meet the State Department of Education's requirements for vocational-technical instructor in the State of registration and/or be recognized as a subject matter expert, for example, a journeyworker for specific instruction in an occupation or a math instructor to instruct the math portion of the related instruction. All instructors must have training in teaching techniques and adult learning styles.

(5) A progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired. The entry wage must not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable Federal law, State law, respective regulations, or by collective bargaining agreement.

(6) Periodic review and evaluation of the apprentice's performance on the job and in related instruction; and the maintenance of appropriate progress records.

(7) A numeric ratio of apprentices to journeyworkers consistent with proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements, except where such ratios are expressly prohibited for by the collective bargaining agreements. The ratio language must be specific and clearly described as to its application to the jobsite, work force, department or plant.

(8) A probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship.

(9) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction.

(10) The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years.

(11) The placement of an apprentice under a written Apprenticeship Agreement that meets the requirements of § 29.7 or the State apprenticeship law of a recognized Registration Agency. The agreement must directly, or by reference, incorporate the standards of the program as part of the agreement.

(12) The granting of advanced standing or credit for demonstrated competency, acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted.

(13) The transfer of an apprentice between apprenticeship programs and within an apprenticeship program, whether at the initiative of the apprentice or the initiative of the employer or the program sponsor. Transfers must occur without adverse impact on the apprentice, the employer, or the program, and must comply with the following requirements:

(i) The transferring apprentice must be provided a transcript of related training and on-the-job learning by the committee or program sponsor;

(ii) Transfer must be to a related occupation or within the same occupation; and

(iii) A new apprenticeship agreement must be executed when the transfer occurs between program sponsors.

(14) Assurance of qualified training personnel and adequate supervision on the job.

(15) Recognition for successful completion of apprenticeship or attainment of an interim credential, as evidenced by an appropriate certificate issued by the Registration Agency.

(16) Identification of the Registration Agency.

(17) Provision for the registration, cancellation and deregistration of the program; and for the prompt submission of any program standard modification or amendment to the Registration Agency for approval.

(18) Provision for registration of apprenticeship agreements, modifications, and amendments; notice to the Registration Agency of persons who have successfully completed apprenticeship programs; and notice of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore.

(19) Authority for the cancellation of an apprenticeship agreement during the probationary period by either party without stated cause; cancellation during the probationary period will not have an adverse impact on the sponsor's completion rate.

(20) Compliance with 29 CFR part 30, including the equal opportunity pledge prescribed in 29 CFR 30.3(b); an affirmative action plan complying with 29 CFR 30.4; and a method for the selection of apprentices authorized by 29 CFR 30.5, or compliance with parallel requirements contained in a State plan for equal opportunity in apprenticeship adopted pursuant to 29 CFR part 30 and approved by the Department. The apprenticeship standards must also include a statement that the program will be conducted, operated and administered in conformity with applicable provisions of 29 CFR part 30, as amended, or, if applicable, an approved State plan for equal opportunity in apprenticeship.

(21) Contact information (name, address, telephone number and e-mail address if appropriate) of the appropriate authority under the program to receive, process and make disposition of complaints.

(22) Recording and maintenance of all records concerning apprenticeship as may be required by the Office of Apprenticeship or recognized State

Apprenticeship Agency and other applicable law.

§ 29.6 Program performance standards.

(a) Every registered apprenticeship program must have at least one registered apprentice.

(b) In order to evaluate performance of a registered apprenticeship program, the tools and factors to be considered must include, but are not limited to:

(1) Quality assurance assessments;

(2) Equal Employment Opportunity (EEO) Compliance Reviews; and

(3) Completion rates.

(c) In order to evaluate completion rates, like industry and occupation programs of the same geographical areas may be evaluated. Programs with dramatically different completion rates will be subject to further review. Based on the review, the Registration Agency will provide technical assistance or take other appropriate action.

(d) Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

§ 29.7 Apprenticeship agreement.

The apprenticeship agreement must contain explicitly or by reference:

(a) Names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor.

(b) The date of birth and, on a voluntary basis, Social Security number of the apprentice.

(c) Contact information of the Program Sponsor and Registration Agency.

(d) A statement of the occupation in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship.

(e) A statement showing:

(1) The number of hours to be spent by the apprentice in work on the job in a time-based program, or a description of the skill sets to be attained by completion of a competency-based program; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and

(2) The number of hours to be spent in related and supplemental instruction in technical subjects related to the occupation, which is recommended to be not less than 144 hours per year.

(f) A statement setting forth a schedule of the work processes in the occupation or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process.

(g) A statement of the graduated scale of wages to be paid the apprentice and whether or not the required school time is compensated.

(h) Statements providing:

(1) For a specific period of probation during which the apprenticeship agreement may be cancelled by either party to the agreement upon written notice to the registration agency, without adverse impact on the sponsor.

(2) That, after the probationary period, the agreement may be:

(i) Cancelled at the request of the apprentice, or

(ii) Suspended, or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the Registration Agency of the final action taken.

(i) A reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they may be amended during the period of the agreement.

(j) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex.

(k) Contact information (name, address, phone and e-mail if appropriate) of the appropriate authority, designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions.

§ 29.8 Deregistration of a registered program.

Deregistration of a program may be effected upon the voluntary action of the sponsor by submitting a request for cancellation of the registration in accordance with paragraph (a) of this section, or upon reasonable cause, by the Registration Agency instituting formal deregistration proceedings in accordance with paragraph (b) of this section.

(a) *Deregistration at the request of the sponsor.* The Registration Agency may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following matters:

(1) The registration is cancelled at the sponsor's request, and the effective date thereof;

(2) That, within 15 days of the date of the acknowledgment, the sponsor will notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for Federal purposes which require the Secretary of Labor's approval of an apprenticeship program, and that all apprentices are referred to the Registration Agency for information about potential transfer to other registered apprenticeship programs.

(b) *Deregistration by the Registration Agency upon reasonable cause.*

(1) Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, and administered in accordance with the program's registered provisions or with the requirements of this part. Deregistration proceedings for violation of equal opportunity requirements must be processed in accordance with the provisions under 29 CFR part 30, as amended.

(2) Where it appears the program is not being operated in accordance with the registered standards or with requirements of this part, the Registration Agency must so notify the program sponsor in writing.

(3) The notice sent to the program sponsor's contact person must:

(i) Be sent by registered or certified mail, with return receipt requested;

(ii) State the shortcoming(s) and the remedy required; and

(iii) State that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

(4) Upon request by the sponsor for good cause, the 30-day term may be extended for another 30 days. During the period for corrective action, the Registration Agency must assist the sponsor in every reasonable way to achieve conformity.

(5) If the required correction is not effected within the allotted time, the Registration Agency must send a notice to the sponsor, by registered or certified mail, return receipt requested, stating the following:

(i) The notice is sent pursuant to this subsection;

(ii) Certain deficiencies were called to the sponsor's attention (enumerating them and the remedial measures requested, with the dates of such occasions and letters), and that the sponsor has failed or refused to effect correction;

(iii) Based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of

the receipt of this notice, the sponsor requests a hearing with the applicable Registration Agency; and

(iv) If the sponsor does not request a hearing, the entire matter will be submitted to the Administrator, Office of Apprenticeship, for a decision on the record with respect to deregistration.

(6) If the sponsor does not request a hearing, the Registration Agency will transmit to the Administrator, a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences will include the time, date, place, and persons present. The Administrator will make a final order on the basis of the record presented.

(7) If the sponsor requests a hearing, the Registration Agency will transmit to the Administrator, a report containing all the data listed in paragraph (b)(6) of this section and the Administrator will refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with § 29.10; and submit proposed findings and a recommended decision to the Administrative Review Board for final agency action.

(8) Every order of deregistration must contain a provision that the sponsor must, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentice from coverage for Federal purposes which require the Secretary of Labor's approval of an apprenticeship program; and that all apprentices are referred to the Registration Agency for information about potential transfer to other registered apprenticeship programs.

§ 29.9 Reinstatement of program registration.

Any apprenticeship program deregistered under § 29.8 of this part may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this part. Such evidence must be presented to the Registration Agency.

§ 29.10 Hearings for deregistration.

(a) Within 10 days of receipt of a request for a hearing, the Administrator of the Office of Apprenticeship must contact the Department's Office of Administrative Law Judges to request the designation of an Administrative Law Judge to preside over the hearing. The Administrative Law Judge shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice will include:

(1) A reasonable time and place of hearing;

(2) A statement of the provisions of this part pursuant to which the hearing is to be held; and

(3) A concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(b) The procedures contained in 29 CFR part 18 will apply to the disposition of the request for review except that:

(1) The Administrative Law Judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request.

(2) Technical rules of evidence will not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at the same time. Thereafter, the decision of the Administrative Law Judge remains final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record. If not so decided, the Administrative Law Judge's decision constitutes final agency action.

§ 29.11 Limitations.

Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, Executive Order, or authorized regulation.

§ 29.12 Complaints.

(a) This section is not applicable to any complaint concerning discrimination or other equal opportunity matters; all such complaints must be submitted, processed and resolved in accordance with applicable provisions in 29 CFR part 30, as amended, or applicable provisions of a State Plan for Equal Employment Opportunity in Apprenticeship adopted pursuant to 29 CFR part 30 and approved by the Department.

(b) Except for matters described in paragraph (a) of this section, any controversy or difference arising under an apprenticeship agreement which cannot be adjusted locally and which is not covered by a collective bargaining agreement, may be submitted by an apprentice, or the apprentice's authorized representative, to the appropriate Registration Authority, either Federal or State, which has registered and/or approved the program in which the apprentice is enrolled, for review. Matters covered by a collective bargaining agreement are not subject to such review.

(c) The complaint must be in writing and signed by the complainant, or authorized representative, and must be submitted within 60 days of the final local decision. It must set forth the specific matter(s) complained of, together with relevant facts and circumstances. Copies of pertinent documents and correspondence must accompany the complaint.

(d) The Office of Apprenticeship or recognized State Apprenticeship Agency, as appropriate, will render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found necessary, and the record before it. During the 90-day period, the

Office of Apprenticeship or recognized State Apprenticeship Agency will make reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties will be notified that the case is closed. Where an opinion is rendered, copies of same will be sent to all interested parties.

(e) Nothing in this section precludes an apprentice from pursuing any other remedy authorized under another Federal, State, or local law.

(f) A State Apprenticeship Agency may adopt a complaint review procedure differing in detail from that given in this section provided it is submitted for review and approval by the Office of Apprenticeship.

§ 29.13 Recognition of State apprenticeship agencies.

(a) *Recognition.* The Department may exercise its authority to grant recognition to a State Apprenticeship Agency. Recognition confers non-exclusive authority to determine whether an apprenticeship program conforms to the published standards and whether the program is, therefore, eligible for those Federal purposes which require such a determination by the Department. Such recognition shall be accorded upon the State's submission of, the Department's approval of, and the State's compliance with the following:

(1) The State Apprenticeship Agency must submit a State apprenticeship law, whether instituted through statute, Executive order, regulation, or other means, that conforms to the requirements of 29 CFR parts 29 and 30;

(2) The State Apprenticeship Agency must establish and continue to use a State Apprenticeship Council. The State Apprenticeship Council may be either regulatory or advisory and must meet the following requirements:

(i) It must be composed of persons familiar with apprenticeable occupations, and

(ii) It must include an equal number of representatives of employer and of employee organizations and include public members who shall not number in excess of the number named to represent either employer or employee organizations;

(3) The State Apprenticeship Agency must submit a State Plan for Equal Employment Opportunity in Apprenticeship that conforms to the requirements published in 29 CFR part 30;

(4) The State Apprenticeship Agency's submission must include a description of the basic standards, criteria, and requirements for program registration and/or approval;

(5) The State Apprenticeship Agency's submission must include a description of policies and operating procedures which depart from or impose requirements in addition to those prescribed in this part; and

(6) The State Apprenticeship Agency's submission must include a description of policies, procedures, and plans that demonstrate how the State's economic development strategies and public workforce investment system incorporate and integrate registered apprenticeship as a critical post-secondary education, training, and employment option available through the One Stop Career Center system.

(b) *Basic requirements.* In order to obtain and maintain recognition as provided under paragraph (a) of this section, the State Apprenticeship Agency must conform to the requirements of this part. To accomplish this, the State must:

(1) Establish and maintain an administrative entity (the State Apprenticeship Agency) that is capable of performing the functions of a Registration Agency under 29 CFR part 29;

(2) Allocate sufficient staff and budget to carry out the functions of a Registration Agency, including: Outreach and education; registration of programs and apprentices; provision of technical assistance, and monitoring as required to fulfill the requirements of this part;

(3) Clearly delineate the respective powers and duties of the State office, the State Apprenticeship Agency, and of the State Apprenticeship Council;

(4) Establish policies and procedures to promote equality of opportunity in apprenticeship programs pursuant to a State Plan for Equal Employment Opportunity in Apprenticeship which adopts and implements the requirements of 29 CFR part 30, as amended, and to require apprenticeship programs to operate in conformity with such State Plan and 29 CFR part 30, as amended;

(5) Prescribe the contents of apprenticeship agreements, in conformity with § 29.7 of this part;

(6) Ensure that the registration of apprenticeship programs occurs only in apprenticeable occupations as provided in § 29.4, including occupations in high growth and high demand industries;

(7) Accord reciprocal approval for Federal purposes to apprentices, apprenticeship programs and standards that are registered in other States by the Office of Apprenticeship or a Registration Agency if such reciprocity is requested by the apprenticeship program sponsor;

(8) Provide for the cancellation and/or deregistration programs, and for temporary suspension, cancellation, and/or deregistration of apprenticeship agreements; and

(9) Submit all proposed modifications in legislation, regulations, policies and/or operational procedures planned or anticipated by a State Apprenticeship Agency, either at the time of application for recognition or subsequently, to the Office of Apprenticeship for review, and obtain the Office of Apprenticeship's approval prior to implementation.

(c) *Application for recognition.* A State Apprenticeship Agency desiring new or continued recognition as a Registration Agency must submit to the Administrator, Office of Apprenticeship, the documentation specified in § 29.13(a) of this part. A currently recognized State desiring continued recognition by the Office of Apprenticeship must submit to the Administrator, Office of Apprenticeship, the documentation specified in paragraph (a) of this section within 1 year of the effective date of the final rule. The recognition of a currently recognized State shall continue for up to 1 year from the effective date of this regulation and during any extension period granted by the Administrator. An extension of time within which to comply with the requirements of this part may be granted by the Administrator for good cause upon written request by the State, but the Administrator shall not extend the time for submission of the documentation required by paragraph (a) of this section. Upon approval of the State Apprenticeship Agency's application for recognition and any subsequent modifications to this application as required under paragraph (b)(9) of this section, the Administrator shall so notify the State Apprenticeship Agency in writing.

(d) *Duration of recognition.* The recognition of a State Apprenticeship Agency shall last for 5 years from the date recognition is granted under paragraph (c) of this section. The Administrator shall notify each State Registration Agency at least 180 days prior to the expiration of the 5-year period whether the Registration Agency is in conformity with this part. If the notification states that the State Apprenticeship Agency is in conformity, recognition will be renewed for an additional 5-year period. If the notification states that the State Apprenticeship Agency is not in conformity, the notification shall specify the areas of non-conformity, require corrective action, and offer technical assistance. After the

Administrator determines that a State Apprenticeship Agency has corrected the identified non-conformities, recognition will be renewed for an additional 5-year period.

(e) *Compliance.* The Office of Apprenticeship will monitor a State Registration Agency for compliance with the recognition requirements of this part through:

(1) On-site reviews conducted by Office of Apprenticeship staff.

(2) Self-assessment reports, as required by Office of Apprenticeship.

(3) Review of State Apprenticeship Agency legislation, regulations, policies, and/or operating procedures required to be submitted under paragraphs (a)(1), (a)(5) and (b)(9) of this section for review and approval as required under § 29.13(a).

(4) Determination whether, based on the review performed under paragraphs (e)(1), (2), and (3) of this section, the State Registration Agency is in compliance with part 29. Notice to the State Registration Agency of the determination will be given within 45 days of receipt of proposed modifications to legislation, regulations, policies, and/or operational procedures required under paragraphs (a)(1), (a)(5) and (b)(9) of this section.

(f) *Accountability/Remedies for non-conformity.*

(1) State Registration Agencies that fail to maintain compliance with the requirements of this part, as provided under paragraph (e) above, will:

(i) Receive technical assistance from Office of Apprenticeship in an effort to remedy the non-conforming activity; and

(ii) Be placed on ''Conditional Recognition'' for a period of 45 days during which the State Apprenticeship Agency must submit a corrective action plan to remedy the non-conforming activity. Upon request from the State Apprenticeship Agency for good cause, the 45-day period may be extended.

(2) Failure to comply with these requirements will result in rescission of recognition, for Federal Purposes as provided under § 29.14.

(g) *Denial of State Apprenticeship Agency Recognition.* A denial by the Office of Apprenticeship of a State Apprenticeship Agency's application for new or continued recognition must be in writing and must set forth the reasons for denial. The notice must be sent by certified mail, return receipt requested. In addition to the reasons stated for the denial, the notice must specify the remedies which must be undertaken prior to consideration of a resubmitted request. A request for administrative review of a denial of recognition may be made within 30 calendar days of receipt of the notice of denial by the Department. Such request must be made by mail and addressed to the Chief Administrative Law Judge for the Department. The mailing address is Office of Administrative Law Judges, U.S. Department of Labor, Suite 400 North, 800 K Street, NW., Washington, DC 20001–8002. Within 30 calendar days of the filing of the request for review, the Administrator must prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge.

(1) The procedures contained in 29 CFR part 18 will apply to the disposition of the request for review except that:

(i) The Administrative Law Judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request.

(ii) Technical rules of evidence will not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(2) The Administrative Law Judge should submit proposed findings and a recommended decision and a certified record of the proceedings to the Administrative Review Board, within 90 calendar days after the close of the record.

(3) Within 20 days of the receipt of the recommended decision, any party may file exceptions. Any party may file a response to the exceptions filed by another party within 10 days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and amici.

(4) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board shall issue a final decision within 180 days after receipt of the record and the expiration of time for the filing of the appellate briefs. The decision of the Administrative Review Board constitutes final action by the Department.

(h) *State apprenticeship programs.*

(1) An apprenticeship program submitted to a State Registration Agency for registration must, for Federal purposes, be in conformity with the State apprenticeship law, regulations, and with the State Plan for Equal Employment Opportunity in Apprenticeship as submitted to and approved by the Office of Apprenticeship pursuant to 29 CFR 30.15, as amended.

(2) In the event that a State Apprenticeship Agency is not recognized by the Office of Apprenticeship for Federal purposes or that such recognition has been withdrawn, or if no State Apprenticeship Agency exists, registration with the Office of Apprenticeship may be requested. Such registration must be granted if the program is conducted, administered and operated in accordance with the requirements of this part and the equal opportunity regulation in 29 CFR part 30, as amended.

(i) *Withdrawal from recognition.* Where a State Apprenticeship Agency's voluntarily relinquishes its recognition for Federal purposes, the State must:

(1) Send a formal notice of intent to the Administrator, Office of Apprenticeship;

(2) Provide all apprenticeship program standards, apprenticeship agreements, completion records, cancellation and suspension records, Equal Employment Opportunity Compliance Review files and any other documents relating to the State's apprenticeship programs, to the Department; and

(3) Cooperate fully during a transition period.

(j) *Retention of authority.* Notwithstanding any grant of recognition to a State Apprenticeship Agency under this section, the Office of Apprenticeship retains the full authority to register apprenticeship programs and apprentices in all States and Territories where the Office of Apprenticeship determines that such action is necessary to further the interests of the National Apprenticeship System.

§ 29.14 Derecognition of State apprenticeship agencies.

The recognition for Federal purposes of a State Apprenticeship Agency may be withdrawn for the failure to fulfill, or operate in conformity with, the requirements of parts 29 and 30. Derecognition proceedings for reasonable cause will be instituted in accordance with the following:

(a) Derecognition proceedings for failure to adopt or properly enforce a State Plan for Equal Employment Opportunity in Apprenticeship must be processed in accordance with the procedures prescribed in 29 CFR 30.15.

(b) For causes other than those under paragraph (a) of this section, the Office of Apprenticeship must notify the respondent and appropriate State sponsors in writing, by certified mail, with return receipt requested. The notice must set forth the following:

(1) That reasonable cause exists to believe that the respondent has failed to fulfill or operate in conformity with the requirements of this part;

(2) The specific areas of nonconformity;

(3) The needed remedial measures; and

(4) That the Office of Apprenticeship proposes to withdraw recognition for Federal purposes unless corrective action is taken, or a hearing request mailed, within 30 days of the receipt of the notice.

(c) If, within the 30-day period, the State Apprenticeship Agency:

(1) Acknowledges that the State is out of conformity, specifies its proposed remedial action and commits itself to remedying the identified deficiencies, the Office of Apprenticeship will suspend the derecognition process to allow reasonable period of time for the State Apprenticeship Agency to implement its corrective action plan.

(i) If the Office of Apprenticeship determines that the State's corrective action has addressed the identified concerns, the Office of Apprenticeship must so notify the State and the derecognition proceedings shall be terminated.

(ii) If the Office of Apprenticeship determines that the State has not addressed or failed to remedy the identified concerns, the Administrator must notify the State, in writing, of its failure, specifying the reasons therefore, and offer the State an opportunity to request a hearing within 30 days.

(2) Fails to comply or to request a hearing, the Office of Apprenticeship shall decide whether recognition should be withdrawn. If the decision is in the affirmative, the Administrator must begin the process of transferring registrations in paragraph (d).

(3) Requests a hearing:

(i) The Administrator shall refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with § 29.13(g) and submit proposed findings and a recommended decision to the Administrative Review Board for final agency action.

(d) If the Administrative Review Board determines to withdraw recognition for Federal purposes or if the Office of Apprenticeship has decided that recognition should be withdrawn under paragraph (c)(2) of this section, the Administrator must:

(1) Notify the registration agency and the State sponsors of such withdrawal and effect public notice of such withdrawal.

(2) Notify the sponsors that, 30 days after the date of the order withdrawing recognition of the State's registration agency, the Department shall cease to recognize, for Federal purposes, each apprenticeship program registered with the State Apprenticeship Agency, unless within that time, the sponsor requests registration with the Office of Apprenticeship.

(e) Apprenticeship program sponsors affected by derecognition of a State Apprenticeship Agency may request registration with the Office of Apprenticeship in accordance with the following:

(1) The Office of Apprenticeship may grant the request for registration on an interim basis. Continued recognition will be contingent upon its finding that the State apprenticeship program is operating in accordance with the requirements of this part and of 29 CFR part 30, as amended.

(2) The Office of Apprenticeship must make a finding on this issue within 30 days of receipt of the request.

(3) If the finding is in the negative, the State sponsor must be notified in writing that the interim registration with the Office of Apprenticeship has been revoked and that the program will be deregistered unless the sponsor requests a hearing within 15 days of the receipt of the notice. If a hearing is requested, the matter will be forwarded to the Office of Administrative Law Judges for a hearing in accordance with § 29.10.

(4) If the finding is in the affirmative, the State sponsor must be notified in writing that the interim registration with the Office of Apprenticeship has been made permanent based upon compliance with the requirements of this part.

(f) If the sponsor fails to request registration with the Office of Apprenticeship, the written notice to such State sponsor must further advise the recipient that any actions or benefits applicable to recognition for Federal purposes are no longer available to the participants in its apprenticeship program as of the date 30 days after the date of the order withdrawing recognition.

(g) Such notice must also direct the State sponsor to notify, within 15 days, all its registered apprentices of the withdrawal of recognition for Federal purposes; the effective date thereof; and that such withdrawal removes the apprentice from coverage under any Federal provision applicable to their individual registration under a program recognized or registered by the Secretary of Labor for Federal purposes. Such notice must direct that all apprentices are referred to the Office of Apprenticeship for information about potential transfer to other registered apprenticeship programs.

(h) Where a State Apprenticeship Agency's recognition for Federal purposes has been withdrawn; the State must:

(1) Provide all apprenticeship program standards, apprenticeship agreements, completion records, cancellation and suspension records, Equal Employment Opportunity Compliance Review files and any other documents relating to the State's apprenticeship programs, to the Department; and

(2) Cooperate fully during a transition period.

(i) A State Apprenticeship Agency whose recognition has been withdrawn under this part may have its recognition reinstated upon presentation of adequate evidence that it has fulfilled the requirements established in § 29.13(i) and § 29.14(g) and (h) and is operating in conformity with the requirements of this part.

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Federal Register

Thursday,
December 13, 2007

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Jollyville Plateau salamander (Eurycea tonkawae) as Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Jollyville Plateau salamander (Eurycea tonkawae) as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Jollyville Plateau salamander (*Eurycea tonkawae*) as endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the Jollyville Plateau salamander as threatened or endangered is warranted. Currently, however, listing of the Jollyville Plateau salamander is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add Jollyville Plateau salamander to our candidate species list. We will develop a proposed rule to list this species as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule.

DATES: We made the finding announced in this document on December 13, 2007.

ADDRESSES: The supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Austin Ecological Services Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758. The finding is available via the Internet at *www.fws.gov/endangered/*. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at *fw2_jps@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, Austin Ecological Services Office (see **ADDRESSES**); by telephone at 512–490–0057; or by facsimile at 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 et seq.) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, and we must make a subsequent finding within 12 months.

Previous Federal Action

On June 13, 2005, we received a petition, dated June 10, 2005, from Save Our Springs Alliance (SOSA), requesting that the Jollyville Plateau salamander (*Eurycea tonkawae*) be listed as an endangered species in accordance with section 4 of the Act.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required all of our listing funds for fiscal year 2005 and a substantial portion of our listing funds for fiscal year 2006. On September 29, 2005, we received a 60-day notice of intent to sue from SOSA for failing to make a timely 90-day finding. On December 1, 2005, we sent a letter to SOSA informing them that we would not likely make a petition finding during fiscal year 2006 due to higher priority actions.

Subsequently, in fiscal year 2006, funding became available to act on the petition. We began working on the 90-day finding at that time. On August 10, 2006, SOSA filed a complaint against the Service for failure to issue a 90-day petition finding under section 4 of the Act for the Jollyville Plateau salamander. In our December 11, 2006, motion for summary judgment, we informed the court that based on current funding and workload projections, we believed that we could complete a 90-day finding by February 6, 2007, and if we determined that the petition provided substantial scientific or commercial information, we could make a 12-month warranted or not warranted finding by December 1, 2007. On February 13, 2007, we published a 90-day petition finding (72 FR 6699) in which we concluded that the petition presented substantial information indicating that listing may be warranted. This notice constitutes the 12-month finding on the June 10, 2005, petition to list the Jollyville Plateau salamander as endangered.

Taxonomy and Species Description

The Jollyville Plateau salamander was recently described as *Eurycea tonkawae* by Chippendale, *et al.* (2000, pp. 1–48), based on morphology and mitochondrial DNA tests. The Jollyville Plateau salamander is a neotenic (does not transform into a terrestrial form) member of the family Plethodontidae. As neotenic salamanders, they retain external gills and inhabit aquatic habitats (springs, spring-runs, and wet caves) throughout their lives (City of Austin (COA) 2001, p. 3). Water for the salamanders is provided by infiltration of surface water through the soil into the aquifer which discharges from springs as groundwater (Schram 1995, p. 91). Juvenile Jollyville Plateau salamanders are less than 1.5 inches (3.8 centimeters); adults are typically 1.5 to 2 inches (3.8–5 centimeters) long (COA 2001a, p. 5). Those salamanders occurring in spring habitat have large, well-developed eyes; wide, yellowish heads; blunt, rounded snouts; dark greenish-brown bodies; and bright yellowish-orange tails (Chippendale, *et al.* 2000, pp. 33–34). Some cave forms of Jollyville Plateau salamanders exhibit cave-associated morphologies, such as eye reduction, flattening of the head, and dullness or loss of color (Chippendale, *et al.* 2000, p. 37).

Genetic analysis suggests that Jollyville Plateau salamanders occurring in caves may actually be separate species from the surface-dwelling forms, but more study is needed to confirm this, because sample sizes from the caves were small (Chippendale, *et al.* 2000, pp. 36–37). For the purposes of this finding, we are considering all of the Jollyville Plateau salamanders described in Chippendale, *et al.* (2000, pp. 32–37) as one species.

Distribution

The Jollyville Plateau salamander occurs in the Jollyville Plateau and Brushy Creek areas of the Edwards Plateau in Travis and Williamson Counties, Texas (Chippendale, *et al.* 2000, pp. 35–36; Bowles, *et al.* 2006, p. 112; Sweet 1982, p. 433). Upon classification as a species, Jollyville Plateau salamanders were known from Brushy Creek and, within the Jollyville Plateau, from Bull Creek, Cypress Creek,

Long Hollow Creek, Shoal Creek, and Walnut Creek drainages (Chippendale, *et al.* 2000, p. 36). Since it was described, the Jollyville Plateau salamander has been documented within the Lake Creek watershed (COA 2006, p. 1).

Cave dwelling Jollyville Plateau salamanders are known from 1 cave in the Cypress Creek drainage and 12 caves in the Buttercup Creek cave system in the Brushy Creek drainage (Chippendale, *et al.* 2000, p. 49; Russell 1993, p. 21; Service 1999, p. 6; HNTB 2005, p. 60). While the entrances to these caves are located within particular watersheds, the subsurface waters could move in a different direction from the surface waters. For example, dyes injected into three of the Buttercup Creek caves later surfaced at one spring (proving subsurface connection of these caves) to the south in the Long Hollow Creek drainage (Hauwert and Warton 1997, pp. 11, 13), rather than to the east where Brushy Creek flows. No further subsurface flow studies have been completed in caves inhabited by Jollyville Plateau salamanders.

Habitat

The Jollyville Plateau salamander's spring-fed tributary habitat is typically characterized by a depth of less than 1 foot (0.3 meters) of cool, well oxygenated water (COA 2001a, p. 128; Bowles, *et al.* 2006, p. 118) supplied by the underlying Edwards Aquifer (Cole, *et al.* 1995, p. 33). Jollyville Plateau salamanders are typically found near springs or seep outflows, and are thought to require constant temperatures (Sweet 1982, pp. 433–434; Bowles, *et al.* 2006, p. 117). Salamander densities are higher in pools and riffles and in areas with rubble, cobble, or boulder substrates rather than on solid bedrock (COA 2001a, p. 128; Bowles, *et al.* 2006, pp. 114–116).

Surface-dwelling Jollyville Plateau salamanders also occur in subsurface habitat within the underground aquifer (COA 2001a, p. 65; Bowles, *et al.* 2006, p. 118). While no one has physically observed these salamanders in the aquifer, there are observations that support this behavior. For example, City of Austin biologists have observed Jollyville Plateau salamanders at spring sites where the springs and associated spring runs had previously ceased flowing, particularly during the 2006 drought, and the surrounding area dried (COA 2006, pp. 5–6). Additionally, City of Austin biologists have noted low counts for small juveniles followed by high counts for large (presumably older) juveniles at several monitoring sites, indicating small juveniles spent time within the subsurface habitat (COA 2001a, pp. 65–66).

Biology

Jollyville Plateau salamander breeding events have not been observed. Eggs have also not been observed in or around springs or in spring runs, indicating egg laying and early development likely occurs in the subsurface aquifer (COA 2001a, p. 4). Bowles, *et al.* (2006, p. 114) observed gravid females (those with eggs visible through the abdominal wall) between November and February and noted the number of juvenile salamanders was higher from March to August. In an effort to learn more about the reproductive biology of Jollyville Plateau salamander, the City of Austin collected salamanders from the wild to start a captive breeding program (COA 2006, pp. 17–18).

Eurycea species in Texas have been found to eat a variety of benthic macroinvertebrates (insects in their larval stage that are found at the bottom of a body of water), such as amphipods and chironomid larvae (midges) (COA 2001a, pp. 5–6). These small invertebrates are also dependant on aquatic habitats for their survival (Price, *et al.* 1999, p. 2).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at 50 CFR 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. In making this finding, we summarize below information regarding the status and threats to this species in relation to the five factors in section 4(a)(1) of the Act. In making our 12-month finding, we considered all scientific and commercial information in our files, including information received during the comment period that ended April 16, 2006 (72 FR 6699).

This status review found threats to the Jollyville Plateau salamander related to Factors A, C, and D. The primary threat to the species is from habitat modification (Factor A) in the form of declining water quality due to the effects of current and future urban development. Other less significant threats to the species' habitat include declining water quantity in groundwater aquifers that support spring flows, direct habitat alterations from human disturbance, and habitat modification from nonnative feral pig activity. Some threats exist from predation by fish and infections of chytrid fungus on salamander appendages (Factor C), but neither of these threats appears to result in a substantial negative response by the species overall. In addition, State regulations and local ordinances intended to protect water quality integrity are not currently adequate to prevent habitat degradation in the aquatic environments occupied by the salamander (Factor D).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Habitat modification, in the form of degraded water quality, is the primary threat to the Jollyville Plateau salamander. The range of the salamander is largely within the urban environment of the Austin, Texas, metropolitan area (Cole 1995, p. 28; COA 2006, pp. 45–50). Urban development upstream of salamander habitat provides sources of various pollutants from construction and maintenance of residential and commercial structures and associated roads and pipelines. These sources contribute pollutants such as sediments, fertilizers, pesticides, and petroleum products into salamander habitat. During rainstorms, water runs off these urban areas, mobilizing and transporting pollutants into the aquatic habitat of the Jollyville Plateau salamander decreasing water quality. Degraded water quality has been linked to deformities in salamanders in some locations (COA 2006, p. 26) and declines in abundance and lower densities of salamanders in some locations with developed watersheds, compared to areas that are undeveloped.

Water quality degradation in salamander habitat has been cited as a substantial concern in several studies (Chippendale, *et al.* 2000, p. 36; Bowles, *et al.* 2006, pp. 118–119; COA 2006, pp. 45–50). The majority of the discussion under factor A will focus on evaluating the nature and extent of decreased water quality and its correlation to the level of urban development, the primary source of this threat. Additionally, we will address the possible threat due to declining water quantity (loss of spring flows) in Jollyville Plateau salamander habitat. Although lack of water quantity is a concern, there is not sufficient information currently available to determine how significant the threat to the salamander from spring flow losses may be, other than this threat likely exacerbates threats from degraded water quality. Other minor threats to habitat include direct alteration from human disturbance and activities by non-native feral hogs *(Sus scrofa).*

City of Austin Monitoring Data

We relied heavily on data provided by the City of Austin in this status review of the Jollyville Plateau salamander. The City of Austin has been monitoring this species' abundance at many locations since 1996. At the same time, the City of Austin has been measuring various water quality and flow parameters within the salamander's habitats. In June 2001, they published a comprehensive report of the initial results of their monitoring efforts between 1996 and 1999 (COA 2001a). The City of Austin continued to collect information on the Jollyville Plateau salamander and its habitat and produced other interim reports. Following publication of our 90-day finding for the salamander, the City of Austin completed a report that summarized monitoring efforts from 1996 through 2006 (COA 2006).

We particularly focused on the results of the data collected by the City of Austin on salamander abundance and water quality at long-term monitoring sites. We found this dataset robust in evaluating the abundance of salamanders based on visual counts at nine locations representative of the salamander's range. Overall, the dataset contained 357 independent counts of salamanders between December 1996 and January 2007 (10 years). The results show that 4 of the 9 sites had statistically significant declines in salamander abundance over the last 10 years (COA 2006, p. 4). The average number of salamanders counted at these 4 sites declined from 27 salamanders counted during surveys from 1996 to 1999 to an average of 4 salamanders counted during surveys from 2004 to 2007. The City reports that these declines are related to degraded water quality from urban development in the contributing watersheds of the monitoring sites (COA 2006, p. 48). Quantifying the nature and extent of the impacts from urban development was a key part of this status review because it characterizes the extent and magnitude of the primary threats to Jollyville Plateau salamander.

Source of Water

Jollyville Plateau salamanders are dependent upon a constant supply of clean water from the northern segment of the Edwards Aquifer (COA 2001a, p. 3). This segment of the Edwards Aquifer extends from the Colorado River in Travis County north to the Lampasas River in southern Bell County (TWD 2003, p. 3). Water quality at springs that provide habitat for Jollyville Plateau salamanders is influenced by both groundwater and surface water interdependently. Surface water can directly supply water to salamander habitats during storm water runoff and also serves as the source for recharge to groundwater aquifers that later discharge to the surface through springs. The northern segment of the Edwards Aquifer where these salamanders occur is not well-studied compared to other parts of the Edwards Aquifer (TWDB (Texas Water Development Board) 2003, p. 1) and, therefore, the recharge areas and flow paths have not been thoroughly described.

Groundwater recharge in the Jollyville Plateau area is described as occurring primarily by filtration of water through the surface soils (rather than through larger, more direct faults and fissures as in other segments of the Edwards Aquifer) (Schram 1995, p. 91). This recharge mechanism was predicted to result in urbanization impacts to water quality over long-term periods (as opposed to short-term responses as in other segments of the Edwards Aquifer), depending on the extent and type of development patterns that occur in the area (Schram 1995, p. 91). Our analysis of threats to habitat focuses on the status of urban development and, therefore, the potential sources for pollutants, in the surface watersheds that drain into stream segments where salamanders occur. The base flow issuing from springs in these stream segments (that is, the portion of stream flow not directly resulting from storm water runoff) is supported by aquifer-dependent spring flows. Groundwater in this area can move in directions independent of surface water flows (Hauwert and Warton 1997, pp. 11, 13). Although specific aquifer sources and recharge areas for the groundwater are not well documented, information available has shown that both groundwater (based on analysis of water from immediate spring discharge) (COA 2001a, pp. 54–56) and surface water (based on observations of increased sedimentation) (COA 2006, pp. 37, 45–47) are affected by urban development.

Urban Development as a Source of Pollutants

The range of the Jollyville Plateau salamander is limited to northwest Travis County and southwest Williamson County, Texas, an area of rapid human population growth. For example, the population of the City of Austin grew from 251,808 people in 1970 to 656,562 people in 2000. By 2007, the population had grown to 735,088 people (COA 2007a, p. 1). This represents a 192 percent increase over the 37-year period. Within the range of the areas that contribute storm water runoff to salamander habitats, urban development has included residential and commercial structures, golf courses, and the associated roads and utility pipelines (Cole 1995, p. 28; COA 2001a, pp.10–12).

As development increases (see Extent of Development in the Foreseeable Future below) more opportunities exist for the chronic, long-term introduction of non-point source pollutants into the environments. For example, the ongoing application of pesticides and fertilizers to lawns is a constant source of pollutants (Menzer and Nelson 1980, pp. 663, 637–652). Petroleum products are also inherent components of urban environments from automobile operation and maintenance (Van Metre, *et al.* 2000, p. 4069). During rain events, these chemical pollutants, which accumulate in soils and on impervious surfaces (such as roofs, parking lots, and roads) during dry periods, are transported by water downstream into areas where salamanders occur. This process can occur either through direct surface water runoff or through infiltration into groundwater that later discharges through springs (Schram 1995, p. 91). Elevated mobilization of sediment (soils of sand, silt, or clay) also occurs as a result of increased velocity of water running off impervious surfaces in the urban environment (Schram 1995, p. 88; Arnold and Gibbons 1996, pp. 244–245). Increased rates of storm water runoff causes erosion by scouring in headwater areas and sediment deposition in downstream channels (Booth 1991, pp. 93, 102–105; Schram 1995, p. 88).

Acute short-term increases in pollutants, particularly sediments, can occur during construction of new development. When vegetation is removed and rain falls on unprotected soils, large discharges of suspended sediments result and can have immediate effects of increased sedimentation in downstream drainage channels (Schueler 1987, p. 1.4; COA 2003, p. 24).

A number of point-sources of pollutants exist in the range of the salamander and result in accidental discharges from utility structures such as storage tanks or pipelines (particularly gas and sewer lines). Leaking underground storage tanks have been documented as a problem within the salamander's range (COA 2001a, p. 16). Sewage spills from pipelines have been documented in watersheds supporting the salamander (COA 2001a, pp. 16, 21, 74). As an example, during this status review, a sewage line overflowed an estimated 50,000 gallons

(190,000 liters) of raw sewage into the Stillhouse Hollow drainage area of Bull Creek (COA 2007b, pp. 1–3). The location of the spill was a short distance downstream of currently known salamander locations, and no salamanders were thought to be affected.

Water Quality Degradation and Jollyville Plateau Salamander Responses

As early as 1995, water quality deterioration, including increases in nutrient levels as a product of urban development, was cited for the Bull Creek watershed, where half of the drainage areas with Jollyville Plateau salamanders occur (Schram 1995, p. 87). The pollutants considered most problematic in Jollyville Plateau salamander habitats (discussed in more detail below) include sediments, ions (such as chlorides and sulfates) and dissolved solids (as measured by conductivity), nutrients (particularly nitrates and ammonia), and petroleum compounds (primarily polycylic aromatic hydrocarbons). Other pollutants such as heavy metals are also possible sources causing water quality degradation from urban runoff, but have not been documented as elevated in the salamander's habitat.

Amphibians, especially their eggs and larvae (which are usually restricted to a small area within an aquatic environment), are sensitive to many different aquatic pollutants (Harfenist, *et al.* 1989, pp. 4–57). Contaminants found in aquatic pollutants may interfere with a salamander's ability to develop, grow, or reproduce (Burton and Ingersoll 1994, pp. 120, 125). In addition, macroinvertebrates, such as small freshwater crustaceans, that the Jollyville Plateau salamander feeds on are especially sensitive to water pollution (Phipps, *et al.* 1995, p. 282; Miller, *et al.* 2007, p. 74). Studies in the Bull Creek watershed found a loss of some sensitive macroinvertebrate species, potentially due to nutrient enrichment and sediment accumulation (COA 2001b, p. 15).

Excess sedimentation is a form of water pollution found in Jollyville Plateau salamander habitats (COA 2006, p. 46). Sediments are mixtures of silt, sand, clay, and organic debris that are washed into streams or aquifers during storm events either as deposited sediment layers or suspended sediments (Ford and Williams 1989, p. 537; Mahler and Lynch 1999, p. 13). Sediment derived from soil erosion has been cited by Menzer and Nelson (1980, p. 632) as the greatest single source of pollution of surface waters by volume. Due to high organic carbon content, sediments eroded from contaminated soil surfaces can concentrate and transport contaminants (Mahler and Lynch 1999, p. 1). Sediment can affect aquatic organisms in a number of ways. Sediments suspended in water can clog gill structures, which impairs breathing of aquatic organisms, and can reduce their ability to avoid predators or locate food sources due to decreased visibility (Schueler 1987, p. 1.5).

Excessive deposition of sediment in streams will physically reduce the amount of available habitat and protective cover for aquatic organisms, by filling in the interstitial spaces of the larger substrates (such as gravel and rocks) surrounding the spring outlets that offer protective cover and an abundant supply of well-oxygenated water for respiration. As an example, a California study found that densities of two salamander species were significantly lower in streams that experienced a large infusion of sediment from road construction after a storm event. The vulnerability of the salamander species in this California study was attributed to their reliance on interstitial spaces in the streambed habitats (Welsh and Ollivier 1998, p. 1,128). The loss of interstitial spaces in stream substrates can be measured as the percent embeddedness. Embeddedness reflects the degree to which rocks (which provide cover for salamanders) are surrounded or covered by fine sediment. Increased sedimentation from urban development is a major water quality threat to the Jollyville Plateau salamander because it fills interstitial spaces and eliminates resting places and also reduces habitat of its prey base (small aquatic invertebrates) (COA 2006, p. 34).

Excess sedimentation may have contributed to declines in Jollyville Plateau salamander populations in the past. The City of Austin monitoring found that, as sediment deposition increased at several monitoring sites, salamander abundances significantly decreased (COA 2001a, pp. 101, 126). As an example, the City of Austin found that sediment deposition and embeddedness estimates have increased significantly along one of the long-term monitoring sites as a result of recent construction activities upstream (COA 2006, p. 34). This site has had significant declines in salamander abundance, based on 10 years of monitoring, and the City of Austin attributes this decline to the increases in sedimentation (COA 2006, pp. 34–35). The location of this monitoring site is within a large preserved tract. However, the headwaters of this drainage are outside the preserve and the development in this area increased sedimentation downstream and impacted salamander habitats.

One practical measure of water quality in freshwater springs, such as those where the Jollyville Plateau salamanders occur, is conductivity. Conductivity is a measure of the electrical conductivity in water and is used to approximate salinity in terrestrial and aquatic environments. Water salinity reflects the concentration of dissolved inorganic solids (that is, salts such as chlorides or sulfates) in water that can affect the internal water balance in aquatic organisms. As ion concentrations such as chlorides, sodium, sulfates, and nitrates rise, conductivity will increase. These compounds are the chemical products, or byproducts, of many common pollutants that originate from urban environments as fertilizers and pesticides (Menzer and Nelson 1980, p. 633).

Conductivity measurements by the City of Austin between 1997 and 2006 found that conductivity measurements averaged between 550 and 650 μS/cm (microsiemens per centimeter) at rural springs with low or no development and averaged between 900 and 1000 μS/cm at monitoring sites in watersheds with urban development (COA 2006, p. 37). These results indicate that developed watersheds contribute to higher levels of water pollution in habitats of the Jollyville Plateau salamander.

High conductivity has been associated with declining salamander abundance. For example, 3 of the 4 sites with statistically significantly declining salamander abundance over the last 10 years are cited as having high conductivity readings (COA 2006, p. 37). Similar correlations were shown in studies comparing developed and undeveloped sites from 1996 to 1998 (Bowles, *et al.* 2006, pp. 117–118). This analysis found significantly lower numbers of salamanders and significantly higher measures of specific conductance at developed sites as compared to undeveloped sites (Bowles, *et al.* 2006, pp. 117–118). However, developed sites also had a higher proportion of bedrock substrate, which is not used by salamanders and may have also contributed to the results of lower salamanders in this study. Poor water quality, as measured by high specific conductance and elevated levels of ion concentrations, is cited as one of the likely factors leading to the statistically significant declines in salamander abundance at City of Austin long-term monitoring sites (COA 2006, p. 46).

Excessive nutrient input to Jollyville Plateau salamander habitat is another form of pollution. Sources of nutrients (which are elements or compounds, such as phosphorus or nitrogen, that fuel abnormally high organic growth in aquatic ecosystems) in water include human and animal wastes, municipal sewage treatment systems, decaying plant material, and fertilizers used on croplands (Garner and Mahler, p. 29). Excessive nutrient levels typically cause algal blooms that ultimately die back and cause progressive decreases in dissolved oxygen concentration in the water from decomposition (Schueler 1987, pp. 1.5–1.6). Increased nitrate levels, which are often associated with fertilizer use, have been known to affect amphibians by altering feeding activity and by causing disequilibrium and physical abnormalities (Marco, *et al.* 1999, p. 2837). Elevated nutrient levels, particularly nitrogen in the forms of nitrates and ammonia, have been documented by the City of Austin in both surface water (COA 2006, p. 37) and groundwater (COA 2001a, pp. 54–56) at several salamander locations with high levels of development.

Water quality monitoring in streams occupied by the Jollyville Plateau salamander has shown that, overall, streams with developed watersheds have statistically significant higher levels of pollutants compared with rural watersheds (COA 2001a, p. 59). The City of Austin defines rural sites as streams draining watersheds with less than 10 percent impervious cover (impervious cover defined below in the Current Impervious Cover Analysis section); developed sites had impervious cover greater than 10 percent (COA 2001a, p. 12). Similar analysis of samples from seven springs also found water quality measures of pollutants in groundwater significantly higher in developed sites compared to rural sites (COA 2001a, pp. 54–56). Developed tributary streams also experienced significantly lower mean adult and juvenile Jollyville Plateau salamander abundances per square meter of wetted surface when compared to undeveloped tributary streams (COA 2001a, p. 99).

An assessment of water quality trends also found that measures of sodium had significant increases between 1997 and 2006 at one site and significant increases in conductivity measurements at three other sites (COA 2006, p. 29). The drainage areas to each of these sites have high levels of urban development (COA 2001a, pp. 29–33; COA 2006, pp. 3, 46).

Poor water quality, particularly elevated nitrates, may also be a cause of morphological deformities in individual Jollyville Plateau salamanders. The City of Austin has documented very high levels of nitrates (averaging over 6 mg/L with some samples exceeding 10 mg/L) and high conductivity at two monitoring sites in the Stillhouse Hollow drainage area (COA 2006, pp. 26, 37). For comparison, nitrate levels in undeveloped Edwards Aquifer springs (watersheds without high levels of urbanization) are typically close to 1 mg/L (milligram per liter) (COA 2006, p. 26). Salamanders observed at the Stillhouse Hollow monitoring sites have shown high incidences of deformities, such as curved spines, missing eyes, missing limbs or digits, and eye injuries (COA 2006, p. 26). The Stillhouse Hollow location was also cited as having the highest observation of dead salamanders (COA 2001a, p. 88). Although no statistical correlations were found between the number of deformities and nitrate concentrations (COA 2006, p. 26), environmental toxins are the suspected cause of salamander deformities (COA 2006, p. 25). Nitrate toxicity studies have indicated that salamanders and other amphibians are sensitive to these pollutants (Marco, *et al.* 1999, p. 2837).

In an effort to reduce the high nitrate levels within the Stillhouse Hollow drainage, City of Austin staff have been working with community residents upstream of Stillhouse Hollow and Barrow Springs in efforts to improve water quality at the spring (COA 2007c, p. 38). The goal of the conservation program, which started in 2001, is to educate more than 250 residents on environmentally appropriate fertilizer use. While the program has resulted in changes to fertilizer use in the targeted community, there have been no changes in water quality detected to date as a result of these efforts (COA 2007c, p. 40).

Polycyclic aromatic hydrocarbons (PAHs) are another form of aquatic pollution that may be affecting Jollyville Plateau salamanders, their habitat, or their prey. PAHs can originate from petroleum products, such as oil or grease, or from atmospheric deposition from the byproducts of combustion (for example, vehicular combustion). These pollutants are widespread and can contaminate water supplies through sewage effluents, urban and highway runoff, and chronic leakage or acute spills of petroleum and petroleum products (Van Metre, *et al.* 2000, p. 4067, Albers 2003, p. 345). Petroleum and petroleum byproducts can adversely affect living organisms by causing direct toxic action, altering water chemistry, reducing light, and decreasing food availability (Albers 2003, p. 349). PAH exposure can cause impaired reproduction, reduced growth and development, and tumors or cancer in species of amphibians, reptiles, and other organisms (Albers 2003, p. 354). PAHs are also known to cause death, reduced survival, altered physiological function, inhibited reproduction, and changes in species populations and community composition of freshwater invertebrates (Albers 2003, p. 352).

Limited sampling by the City of Austin has detected PAHs at concentrations of concern at three sites in the range of the Jollyville Plateau salamander. Most notable, were the elevated levels of nine different PAH compounds at the Spicewood Springs site in the Shoal Creek drainage area (COA 2005, pp. 16–17). This is also one of the sites where salamanders have shown a significant decline in abundance during the City of Austin long-term monitoring studies (COA 2006, p. 47).

In summary, the best available information indicates that habitat destruction, in the form of water quality degradation, is occurring in the majority of the range of the Jollyville Plateau salamander, as evidenced by elevated levels of sedimentation, ions, nutrients, and PAHs documented in salamander habitats. The primary threat from water quality stressors is, therefore, at a significant level of exposure and is imminent because detrimental effects are already being manifested. Probable negative responses by Jollyville Plateau salamanders to habitat degradation from water quality declines include mortalities and deformities of individual salamanders at several sites and significant declines in abundance at four monitoring sites over the last 10 years. In addition, sedimentation results in physical loss of available habitat and changes macroinvertebrate communities, which are the prey (food sources) for the salamander. These habitat modifications are most likely the result of urban development in the drainage areas where salamanders occur. Overall, the information available provides compelling evidence that urban development has led to decreases in water quality caused by higher levels of aquatic pollutants and increased sedimentation in habitats of Jollyville Plateau salamanders. Such habitat destruction or modification (in the form of decreased water quality) has shown to significantly lower salamander abundance.

Extent of Existing and Future Development

We used two quantitative measures to assess the extent of urban development

within areas draining to stream segments where Jollyville Plateau salamanders are known to occur. This analysis provided a tool for assessing the scope (geographic extent), immediacy (potential future effects), and the intensity (strength of stressor) of the habitat stressors that originate from urban development (the source of water quality threats). For this status review, we assumed that, as the amount of urban development increases, as quantified by these two measurements, the extent (that is the scope, immediacy, and intensity) of the source of water quality threats also increases.

The first measure is the estimated percent of impervious cover and the second is the overall percent of land area that is currently developed, undeveloped, or open space (these terms are defined below). Impervious cover is any surface material, such as roads, rooftops, sidewalks, patios, paved surfaces, or compacted soil, that prevents water from filtering into the soil (Arnold and Gibbons 1996, p. 244). Developed areas are land tracts that have structures already built on the property including, for example, tracts with land use designations of residential, commercial, industrial, civic (public), utilities, and roads. Undeveloped tracts were those that have not been dedicated as open space, and have not yet had any construction on the land. Open space includes lands set aside for either low-use recreation (some recreational parks are included) or as wildlife preserves.

To calculate impervious cover and land use, the City of Austin delineated the surface drainage area flowing into 20 distinct stream segments with all currently known salamander localities. Then, for each of these drainage areas, they calculated the percent of impervious cover using the area of the building and transportation footprints. For the land use calculations, they determined which parcels fell into each of 15 categories (Single-Family Residential, Mobile Home, Large-Lot Single-Family Residential, Multi-Family Residential, Commercial, Office, Industrial, Civic, Open Space, Golf Course, Transportation, Streets and Roads, Utilities, Undeveloped, and Water) based upon land usages. We summarized these data by calculating the total area of the parcels designated as ''undeveloped'' and ''open space'' and adding all the other categories together, with the exception of ''water'', to create our ''developed'' category. ''Water'' was only found in one polygon in the Walnut Creek watershed and was not added to any land use category.

Current Impervious Cover Analysis. We evaluated the current (2006 and 2007) levels of impervious cover in the areas that drain to salamander locations, which include undeveloped tracts and open spaces in the calculation. Once natural vegetation in a watershed is replaced with impervious cover, rainfall is converted to surface runoff instead of filtering through the ground (Schueler 1991, p. 114). Citing a number of other studies, Bowles, *et al.* (2006, p. 111) state that impervious cover in watersheds elevates the frequency and intensity of storm flows (water draining watersheds immediately following rain events) and reduces baseflow (flows from spring flows not directly influenced by rain events) in receiving streams, increases erosion and down cutting (lowering the elevation of stream channels by moving substrates downstream), and contributes nutrient and toxic pollutant loads. Also, Schueler (1994, p. 104) found that sites receiving runoff from high impervious cover drainage areas had sensitive aquatic macroinvertebrate species replaced by species more tolerant of pollution and hydrologic stress (high rate of changes in discharges over short periods of time).

Various levels of impervious cover within watersheds have been cited as having detrimental effects to water quality within streams. The threshold of measurable degradation of stream habitat and loss of biotic integrity consistently occurs with 6 to 15 percent impervious cover in contributing watersheds (Bowles, *et al.* 2006, p. 111; Miller, *et al.* 2007, p. 74). A review of relevant literature by Schueler (1994, p. 100–102) indicates that stream degradation occurs at impervious cover of 10 to 20 percent, a sharp drop in habitat quality is found at 10 to 15 percent impervious cover, and watersheds above 15 percent are consistently classified as poor, relative to biological condition. Schueler (1994, p. 102) also concluded that even when water quality protection practices are widely applied, 35 to 60 percent impervious cover exceeds a threshold beyond which we cannot maintain predevelopment water quality.

The 20 drainage areas within the range of the Jollyville Plateau salamander have impervious cover estimates ranging from 0 percent to 45 percent. For the purposes of our analysis, we categorized each of the 20 drainage areas (based on overall drainage areas, which incorporate undeveloped tracts and open spaces) as either low (less than 6 percent impervious cover), moderate (between 6 and 15 percent impervious cover), high (between 16 and 34 percent impervious cover), or very high (35 percent impervious cover or greater) to assess the intensity of development. Five of the areas had overall low levels of impervious cover (less than six percent). Eight areas had moderate levels of impervious cover (6 to 15 percent). Five areas had high levels of impervious cover (16 to 34 percent). Two drainage areas had very high levels of impervious cover (35 percent or greater). We expect the levels of impervious cover to increase as undeveloped areas are developed in the future (discussed in more detail below in the Extent of Development in the Foreseeable Future section). In summary, based on the best available information we found that 15 of the 20 drainage areas evaluated have levels of impervious cover (greater than 5 percent) that may be detrimental to salamander habitats. Therefore, the Jollyville Plateau salamander has a significant level of exposure to threats from water quality degradation originating in urban development because a majority of populations are potentially affected.

Current Land Use Analysis. We also evaluated the extent of the potential pollution sources from urban areas affecting Jollyville Plateau salamander habitat by quantifying the land use designation in all upstream areas that drain to stream segments where salamanders have been documented to occur. Overall, we found that the 20 drainage areas upstream of salamander locations encompass 15,485 ac (6,267 ha), ranging in size from 44 to 2,063 ac (18 to 835 ha). Of the overall total, 8,464 ac (3,425 ha) (55 percent) are already developed, 2,432 ac (984 ha) (16 percent) are currently undeveloped, and 4,586 ac (1,856 ha) are dedicated as open space (30 percent).

A substantial portion of the land area categorized as open space is protected as part of the Balcones Canyonlands Preserve (BCP). The BCP is managed as mitigation lands by the City of Austin, Travis County, or others under the authority of an Endangered Species Act Section 10(a)(1)(B) permit and Habitat Conservation Plan for the protection of endangered birds and karst invertebrates. Of the 4,586 acres (ac) (1,856 hectares (ha)) in the drainage areas designated as open space, an estimated 3,999 ac (1,618 ha) (87 percent) is within areas managed under the BCP. Although the permit that created the BCP did not include the Jollyville Plateau salamander, the BCP land management strategies provide strong protections for salamander habitats on lands within the preserve. Water quality in salamander sites

located within the BCP, however, is influenced by land use practices upstream and outside the BCP preserves. For example, important headwater areas in Tributaries 5 and 6 of Bull Creek (where significant declines in salamander abundance have been found) have affected habitats downstream (COA 2006, p. 45).

One of the drainage areas that have been severely impacted by older urban development (in place more than 20 years) is the Walnut Creek drainage. In this drainage area, 88 percent of the watershed is developed and 7 percent is open space. Overall, it has a very high level of impervious cover (36 percent). Only one small spring pool has been found in the past to have salamanders within this drainage area and the location is within a small recreational park. Despite several recent survey efforts, salamanders have not been observed there since 2005, and the species may be extirpated from this drainage area (COA 2006, p. 47). This site is likely an example of the extirpation of a Jollyville Plateau salamander population as a result of the long-term impacts of a highly urbanized watershed.

Development in Drainage Areas at Monitoring Sites. We also did these analyses specifically for the nine long-term monitoring sites. For some sites, this required evaluating a subset of the drainage area of the stream segment so as to include only areas that are upstream of the monitoring site. We found that the drainage areas of the long-term monitoring sites with declining salamander abundance had high rates of impervious cover. Of the four long-term monitoring sites where the City of Austin documented declines in salamander abundance (discussed in more detail above in the City of Austin Monitoring Data section), one site was in a watershed with very high levels of impervious cover, two sites were in watersheds with high levels of impervious cover, and one site was in a watershed with moderate levels of impervious cover. Of these four sites, the drainage areas were 97 percent, 83 percent, 80 percent, and 46 percent developed. Three of these sites each had 12 percent or less of their drainage areas in open space. These data support the general conclusion that sites with declining salamander abundances have highly developed watersheds.

One exception is the monitoring site at Tributary 5 of the Bull Creek Watershed, which has declining abundance, but only moderate levels of impervious cover and only 46 percent of the drainage area developed. Tributary 5 is within the BCP (described above in the Current Land Use Analysis section). However, this site has substantial development (461 ac, 187 ha) within the headwaters of the drainage area to this monitoring site, and excessive sedimentation has been observed here (discussed in more detail above in the City of Austin Monitoring Data section). Since 1997, this site also has seen increases in recent development as the reported estimated impervious cover has increased from between 5 and 11 percent (COA 2001a, p. 33) to a current estimate of 13 percent.

One of the nine long-term monitoring sites (Wheless site in Long Hollow drainage area) had increasing salamander abundance over the 10 years of study. The drainage area for this site has no development and 97 percent of the area is within protected lands of the BCP, including the headwaters. These results provide correlated evidence that poor water quality resulting from the high levels of urban development result in a decline in abundance of the Jollyville Plateau salamander at specific locations. Therefore, as the intensity of the source of threats to habitat (how water quality resulting from urban development) increases, a negative response by the salamander at the population is apparent.

We also compared the mean number of salamanders counted during recent monitoring surveys (between 2004 and 2006) at the long-term monitoring sites (unpublished data provided by the City of Austin) with the current level of development within the drainage areas (percent developed). Although the sample efforts among sites were not standardized, the comparison showed a trend that, as the percent of development increased in drainage areas, the mean number of Jollyville Plateau salamanders counted decreased. This correlation indicates that as development levels increase, the actual abundance of salamanders decreases. Urban development results in low water quality and increased sedimentation, which negatively impacts salamander abundance. This again supports the conclusion that the intensity of urban development is inversely related to the population response of the Jollyville Plateau salamander. A similar correlation was documented for a species of *Eurycea* salamander in North Carolina. As impervious cover increased in drainage areas, salamander abundances in streams significantly decreased (Miller, *et al.* 2007, p. 79).

Treatment of Cave Locations and Brushy Creek. For the impervious cover and land use analysis described above, we did not include the caves occupied by Jollyville Plateau salamanders from the Buttercup Creek and Cluck Creek drainage areas in the City of Cedar Park as part of the 20 drainage areas. Instead, we analyzed these drainage areas separately because all of the salamander locations in the Buttercup Creek and Cluck Creek drainage areas are within caves (and are the cave form of the species, as described above in the Background section). We do not have specific information on the extent to which surface drainage areas contribute waters to these salamander cave locations; subsurface water within the caves is likely originating from other surface drainage basins. The Buttercup Creek drainage area (where caves occur that contain salamanders) encompasses 689 ac (279 ha) and has 10 percent impervious cover and is 37 percent developed, 18 percent undeveloped, and 45 percent open space. The Cluck Creek drainage area (also where caves occur that contain salamanders) encompasses 248 ac (100 ha) and has 16 percent impervious cover and is 53 percent developed, 27 percent undeveloped, and 20 percent open space. The urban development in the drainage areas around these cave locations is at moderate to high levels and, depending on hydrogeology of subsurface flows, could be affecting water quality in the aquatic habitats in the caves.

We also separately evaluated one Jollyville Plateau salamander location along Brushy Creek located approximately 1.5 miles (2.4 kilometers) east of Interstate Highway 35. This location is approximately 5 miles (8 kilometers) northeast of the nearest other known salamander location. We are not aware of any surveys for salamanders for most of the Brushy Creek drainage (which encompasses over 38,000 ac (15,000 ha)) and additional locations could be discovered with future surveys (Hillis 2007, p. 1). Salamanders from the one site along Brushy Creek mainstem were included in the taxonomic study describing the species. Genetic studies confirmed that salamanders from this location were Jollyville Plateau salamanders (Chippendale, *et al.* 2000, p. 49). This known salamander habitat is isolated at one spring site on private property near an existing office complex (Chippendale, *et al.* 2000, p. 36). The location appears to be about 200 feet (61 meters) from the Brushy Creek channel at a spring outflow along a steep bank (Hillis 2007, p.1). We do not know if the salamander occurs in other parts of Brushy Creek itself, and, therefore, we do not know if the species would be

affected by upstream development in the Brushy Creek watershed.

We treated the Brushy Creek drainage area separately because of the uncertainties of the status of the salamander in this drainage area, and because the size of the drainage is more than twice that of all the other areas combined and would inaccurately skew the results. The Brushy Creek drainage area had an estimated impervious cover of 15 percent. Current land use analysis showed the Brushy Creek drainage area has 46 percent developed, 48 percent undeveloped, and 6 percent open space. This drainage area is currently moderately impacted by development and, with such a small area of open space and large undeveloped area, it is likely to be more heavily impacted by urban development in the foreseeable future.

Conclusion on Existing and Future Development. Based on our assessments of impervious cover and current land use, the level of development in a drainage area (the primary source of water quality degradation and sedimentation loading) can be indicative of the abundance and trend of Jollyville Plateau salamander populations within the receiving streams downstream. The scope of the threat to water quality from urbanization (based on the geographic extent) is considered moderate because it occurs in multiple watersheds. The strength and the exposure of the threat source are considered moderate to high because a majority of the drainage areas are already impacted by urban development. We also used this information and relationship of land use data to predict the future extent of the threats to salamander habitat from urban development.

Extent of Development in the Foreseeable Future

The amount of developed land within the areas draining to salamander habitat is expected to increase in the foreseeable future, which as we explain below, we consider to be 20 years. We expect the majority of currently undeveloped areas that are not preserved as open space (total of 2,432 ac (984 ha)) to be developed as residential or commercial structures within the next 20 years. This expectation is based on the rapid human population projections for the Austin metropolitan area. For example, the 2007 population estimates for the City of Austin and the Austin MSA (metropolitan statistical area, which includes Bastrop, Caldwell, Hays, Travis, and Williamson Counties) are 724,111 and 1,501,522, respectively. By 2025 (the year nearest 20 years out from present for which population data are available), the population projections for the same two areas are 1,041,401 and 2,603,682, respectively (COA 2007a, p. 1). Between 2007 and 2025, these forecasts represent a 44 percent increase in the City of Austin and a 73 percent increase in the human population in the Austin MSA. The area in northwest Austin where salamander habitat occurs has limited lands on which to build additional structures to accommodate expected growth. Therefore, based on high expected growth and limited areas to build, we assume for the purposes of this status review that the remaining undeveloped lands in drainage areas of salamander habitat that are not located within open space preserves are likely to be developed within the next 20 years.

Using this assumption, we combined the developed and undeveloped categories of land use and calculated the total amount of development (current and future) in each area draining into the 20 stream segments with salamanders. To characterize the scope of development within each area, we grouped the drainages into four levels of development (both current and future): 0 to 25 percent, 26 to 50 percent, 51 to 75 percent, and greater than 76 percent developed. This provided us with an estimate of the maximum level of future development that can be expected. We found that 11 of the 20 drainage areas are likely to have greater than 76 percent of their land area developed. There are likely to be three drainage areas with 51 to 75 percent developed, four drainage areas with 26 to 50 percent developed, and two drainage areas with 0 to 25 percent developed. Because the majority of drainage areas are likely to be over 75 percent developed, these results support the conclusion that threats to Jollyville Plateau salamander habitats from urbanization are likely to increase in the foreseeable future.

Conclusion on Habitat Threats From Water Quality Degradation

Based on these results, we conclude that the level of impervious cover and overall land use are reasonable indicators of the intensity and exposure of water quality threats to salamander habitat. The intensity (strength of stressor) of the threat and level of exposure are considered high because a majority of the drainage areas with salamanders currently have levels of urban development (based on impervious cover rates and proportion of developed lands) that have been shown to cause negative responses by salamanders.

Water Quantity and Spring Flow Declines

The northern segment of the Edwards Aquifer is the primary supply of water for Jollyville Plateau salamander habitat (Cole 1995, p. 33). In general, the aquifer has been described as localized, small, and highly susceptible to pollution, drying, or draining (Chippendale, *et al.* 2000, p. 36). The portion of the Edwards Aquifer underlying the Jollyville Plateau is relatively shallow, with a high elevation, thus being likely to not sustain spring flows during periods of drought (Cole 1995, pp. 26–27). Increased urbanization in the watershed has been cited as one factor, in combination with drought, causing declines in spring flows (COA 2006, pp. 46–47). This could occur because of the inability of the watershed to allow slow filtration of water through soils following rain events. Instead rainfall runs off impervious surfaces and into stream channels at higher rates, increasing downstream flows and decreasing groundwater recharge (Miller, *et al.* 2007, p. 74).

We found no specific evidence that aquifer declines or spring flow losses have occurred as a result of urbanization or the direct use of aquifer water by pumping (TWDB 2003, p. 32). Predictions of future groundwater use in this area suggest a large drop in pumping as municipalities convert from groundwater to surface water supplies (TWDB 2003, p. 65). However, field studies have shown that a number of springs that support Jollyville Plateau salamanders have already gone dry periodically and that spring waters resurface following rain events (COA 2006, p. 46–47).

Although water quantity decreases and spring flow declines are cited as a threat to the Jollyville Plateau salamander (Bowles, *et al.* 2006, p. 111), we did not find evidence that salamander habitats and populations are being substantially affected by lack of sufficient water quantity. Jollyville Plateau salamanders apparently spend some part of their life history in underground aquatic habitats and have the ability to retreat underground when surface flows decline. For example, one of the City of Austin monitoring sites where the salamanders are most abundant undergoes periods where there is no surface water for habitat by the salamander (COA 2006, p. 47). Drying spring habitats can result in stranding salamanders, resulting in death of individuals (COA 2006, p. 16).

In summary, the intensity and exposure of water quality threats posed by potential declining aquifer levels and loss of spring flow to the Jollyville Plateau salamander appear to be relatively low. This is because the aquifer is not currently used to a large extent as a water source for human use, and it is unlikely that it will be in the future. Also, we do not have substantial evidence that declining water quality is resulting in a negative response by the salamander. However, continued future development, which increases runoff and decreases aquifer recharge, and the potential use of water from the northern segment of the Edwards Aquifer may cause significant threats to the species' existence in the future.

Minor Habitat Threats

Frequent human visitation associated with some habitat of the Jollyville Plateau salamander may negatively affect the species and its habitat. Documentation from the City of Austin of disturbed vegetation, vandalism, and the destruction of travertine deposits (fragile rock formations formed by deposit of calcium carbonate on stream bottoms) by foot traffic has been documented at one of their salamander monitoring sites in the Bull Creek watershed (COA 2001a, p. 21) and may result in direct destruction of small amounts of the salamander's habitat. This threat is of low magnitude because the negative impacts occur infrequently and at limited locations.

Feral hogs have become abundant in some areas where the Jollyville Plateau salamander occurs. Feral hogs can negatively impact salamander habitat by physically wallowing in spring heads and destroying interstitial spaces and increasing sedimentation downstream (COA 2006, p. 34). The City of Austin has addressed this threat in some areas by constructing enclosure fences around known salamander locations (COA 2006, p. 46). Feral hogs are a low magnitude threat (low intensity and localized scope) to the salamander.

Conclusion on Threats to Habitat

The Jollyville Plateau salamander is threatened due to modification of the species' habitat (Factor A), both presently and into the foreseeable future. The presence of significant urban development in a majority of watersheds draining water to salamander locations has resulted in the deterioration of the water quality in salamander habitats characterized by an increase in sedimentation and pollutant loading. This water quality decline has resulted in the physical loss of salamander habitat from sedimentation, changes in the composition of its macroinvertebrate prey base, death and deformities of individual salamanders, and the overall decline in abundance of the salamanders over time in areas with urban watersheds.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information regarding overutilization of Jollyville Plateau salamanders for commercial, recreational, scientific, or educational purposes and do not consider this a significant factor affecting this species (i.e., a threat) now or in the foreseeable future.

Factor C. Disease or Predation

City of Austin biologists found Jollyville Plateau salamander abundances were negatively correlated with the abundance of predatory centrarchid fish (carnivorous freshwater fish belonging to the sunfish family), such as black bass (*Micropterus* spp.) or sunfish (*Lepomis* spp.) (COA 2001a, p. 102). Predation of a Jollyville Plateau salamander by a centrarchid fish was observed during a May 2006, field survey (COA 2006, p. 38). However, Bowles, *et al.* (2006, pp. 117–118) rarely observed these predators in Jollyville Plateau salamander habitat. Jollyville Plateau salamanders have been observed retreating into gravel substrate after cover was moved suggesting these salamanders display anti-predation behavior (Bowles, *et al.* 2006, p.117). We have no data to indicate whether predation of the Jollyville Plateau salamander may increase in the future or is considered a significant factor affecting the species and therefore a threat.

Chytridiomycosis (Chytrid fungus) is a fungal disease that is responsible for killing amphibians world wide (Daszak, *et al.* 2000, p. 445). The chytrid fungus has been documented on the feet of Jollyville Plateau salamanders (COA 2006, pp. 22–23). However, for unknown reasons, the salamanders are not displaying signs of infection (COA 2006, p. 23); individuals held in captivity tested positive for seven months, but never displayed symptoms (COA 2006, p. 23). We have no data to indicate whether impacts from this disease may increase or decrease in the future, and therefore, whether it is a significant factor affecting the species (i.e., a threat).

While predation and disease may be affecting Jollyville Plateau salamanders, neither factor is at a level that we consider to be threatening the continued existence of the salamanders now or in the foreseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The Jollyville Plateau salamander is not listed on the Texas State List of Threatened or Endangered Species (TPWD 2006, pp. 2–3). Therefore it is receiving no direct protection from the State.

Under authority of the Texas Administrative Code (Title 30, Chapter 213), the Texas Commission on Environmental Quality (TCEQ) regulates activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. However, less than half of the known Jollyville Plateau salamander locations occur within those portions of the Edwards Aquifer regulated by TCEQ; therefore, many do not benefit from these protections (TCEQ 2001, p. 1). For those Jollyville salamander locations that are covered by the TCEQ regulations, the regulations do not address land use, impervious cover limitations, non-point source pollution, or application of fertilizers and pesticides over the recharge zone (30 TAC 213.3). We are unaware of any water quality ordinances more restrictive than TCEQ in Williamson County or in Travis County outside the City of Austin.

The City of Austin's water quality ordinances (City of Austin Code, Title 25, Chapter 8) provide some water quality regulatory protection to the salamander's habitat within Travis County; however, based on water quality monitoring, they are not effective at reducing nutrient levels (see discussion in Factor A). In addition, Title 7, Chapter 245 of the Texas Local Government Code permits ''grandfathering'' of State regulations. Grandfathering allows developments to be exempted from new requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. However, these developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed (Title 7, Chapter 245 of the Texas Local Government Code p. 1). Unpublished data provided by City of Austin indicates that up to 26 percent of undeveloped areas within watersheds draining to Jollyville Plateau salamander habitat may be exempted from current water quality control requirements due to ''grandfathering'' legislation.

The BCP offers some water quality benefits to the Jollyville Plateau salamander in portions of the Bull Creek, Brushy Creek, Cypress Creek, and Long Hollow Creek drainages through preservation of open space (Service 1996a, pp. 2–28, 2–29). However, eight of the nine City of Austin monitoring sites occupied by the Jollyville Plateau salamander within the BCP are being affected or have been affected by water quality degradation occurring upstream and outside of the preserved tracts (see Factor A for discussion) (COA 2006, p. 29, 34, 37, 49; COA 1999, pp. 6–11; Travis County 2007, p. 4). Additionally, Jollyville Plateau salamanders are not a covered species under the section 10(a)(1)(B) permit under which the preserves were established (Service 1996b, pp. 1–10). Therefore, they receive no specific protections under the BCP permit, such as mitigation to offset impacts from development.

Data indicate that water quality degradation in streams occupied by Jollyville Plateau salamanders continues to occur despite the existence of current regulatory mechanisms in place to protect water quality (COA 2006, p. 29). Therefore, we consider the inadequacy of existing regulatory mechanisms to be a threat to the Jollyville Plateau salamander now and in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

We are not aware of any information regarding other natural or manmade factors affecting the Jollyville Plateau salamanders' continued existence. Therefore, we have determined that there are no other natural or manmade factors significantly affecting this species now or in the foreseeable future that constitutes a threat to the Jollyville Plateau salamander.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment period following the publication of our 90-day petition finding. This 12-month finding reflects and incorporates information we received during the public comment period, or obtained through consultation, literature research, and field visits, and responds to significant issues identified. We also consulted with recognized Jollyville Plateau salamander experts. On the basis of this review, we find that the listing of the Jollyville Plateau salamander is warranted, due to threats associated with habitat modification from urban development causing water quality degradation, and the inadequacy of existing regulatory mechanisms. However, listing of the Jollyville Plateau salamander is precluded at this time by pending proposals for other species with higher listing priorities and actions.

The threats to the Jollyville Plateau salamander support a finding that the species warrants listing as threatened or endangered throughout its range. The primary factor leading to our finding are threats described above under Factor A. The source of the habitat threats are from substantial levels of urban development that has occurred on a majority of watersheds draining to salamander habitats. For example 55 percent of the land draining to salamander habitat is already developed. This urbanization produces pollutants that have caused demonstrable declines in the water quality where salamanders live. The immediacy of the threats is high because impervious cover and developed areas are chronic sources for water quality degradation that are currently occurring and are likely to increase with future urban development in the salamander's range. The threat intensity (that is the strength of the water quality degradation stressor) is moderate because actual measures of significant water quality problems are in limited portions of the salamander's range. The level of exposure of the threat is found to be high, based on urbanization in a majority of the species' range. These water quality impacts alter physical aquatic habitats and the food sources of the salamander, producing negative population responses. Negative responses by the salamander have been documented at both the individual level (mortalities and deformities) and the population level (significant declines in abundance over the last 10 years). We find the overall negative response by the salamander to be at a moderate level because deformities and deaths of salamanders have been limited in scope to a few localities and only one location may have experienced an extirpation. Otherwise, the current range of the salamander changed little from the known historic range. On balance of these facts, we find the overall level of threat from habitat modifications to be moderate.

The other factor we found to be contributing to the warranted status of the Jollyville Plateau salamander is that State (TCEQ) and local (City of Austin and BCP) regulations have not been adequate to prevent or minimize impacts to salamanders (Factor D). This is evidenced by data gathered at monitoring sites in developing drainage areas with the species.

Since this finding is warranted but precluded, we do not need to specifically determine whether it is appropriate to perform a ''significant portion of the range'' analysis for this species. However, due to the restricted nature of the Jollyville Plateau salamander's range, we generally consider all of the remaining range to be significant for the conservation of this species. Because of a small and restricted population distribution, and because of threats described above, the Jollyville Plateau salamander warrants listing as threatened or endangered throughout its entire range. We will make a determination on the status of the species as threatened or endangered, during the proposed listing rule process.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing

and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (e.g., Recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species; we expect to also be able to do this in FY 2008.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding whether, when making a 12-month petition finding, we would prepare and issue a listing proposal or make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying P.L. 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise.''

In FY 2008, expeditious progress is that amount of work that can be achieved with $5,131,000, which is the amount of money we have for the Listing Program at this time. Since Congress has yet to approve a Listing Program appropriation for FY 2008, we are working under a Continuing Resolution. We are using the FY 2006 enacted budget amount ($5,131,000) for the Listing Program that is not within the critical habitat subcap. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $5,131,000 for listing activities (that is, the portion of the Listing Program funding not related to critical habitat designations for species that already are listed) will be used to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and program management functions; and high-priority listing actions. The allocations for each specific listing action are identified in the Service's FY 2008 Draft Allocation Table (part of our administrative record). We are working on completing our allocation at this time. More funds are anticipated to be available in FY 2008 than in previous years to work on listing actions that are not the subject of court orders or court-approved settlement agreements.

Our decision that a proposed rule to list the Jollyville Plateau salamander is warranted but precluded includes consideration of its listing priority. In accordance with guidance we published on September 21, 1983, we assign an LPN to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or non-imminent), and taxonomic status of the species, in order of priority (monotypic genus (i.e., a species that is the sole member of a genus), species, subspecies, distinct population segment, or significant portion of the range). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

We currently have more than 120 species with an LPN of 2. Therefore, we further rank the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprise a list of approximately 40 candidate species (''Top 40''). These 40 candidate species have the highest priority to receive funding to work on a proposed listing determination. Note, to be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to

endangered are lower priority, since the listing of the species already affords the protection of the Act and implementing regulations. We assigned the Jollyville Plateau salamander an LPN of 8, based on our finding that the species faces threats of moderate magnitude that are imminent, and on its taxonomic status as a species (see Finding section).

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (We note that we do not discuss specific actions taken on progress towards removing species from the Lists because that work is conducted using appropriations for our Recovery program, a separately budgeted component of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Our expeditious progress in FY 2007 in the Listing Program, up to the date of making this finding for the Jollyville Plateau salamander, included preparing and publishing the following determinations:

FY 2007 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/11/2006 ...	Withdrawal of the Proposed Rule to List the Cow Head Tui Chub (*Gila biocolor vaccaceps*) as Endangered.	Final withdrawal, Threats eliminated.	71 FR 59700–59711
10/11/2006 ...	Revised 12-Month Finding for the Beaver Cave Beetle (*Pseudanophthalmus major*).	Notice of 12-month petition finding, Not warranted.	71 FR 59711–59714
11/14/2006 ...	12-Month Finding on a Petition to List the Island Marble Butterfly (*Euchloe ausonides insulanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	71 FR 66292–66298
11/14/2006 ...	90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf Of Maine Distinct Population Segment.	Notice of 90-day petition finding, Substantial.	71 FR 66298–66301
11/21/2006 ...	90-Day Finding on a Petition To List the Columbian Sharp-Tailed Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 67318–67325
12/5/2006	90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 70483–70492
12/6/2006	12-Month Finding on a Petition To List the Cerulean Warbler (*Dendroica cerulea*) as Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	71 FR 70717–70733
12/6/2006	90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (*Nerodia sipedon*) as an Endangered Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	71 FR 70715–70717
12/14/2006 ...	90-Day Finding on a Petition to Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered.	Notice of 5-year Review, Initiation Notice of 90-day petition finding, Not substantial. Notice of 90-day petition finding, Substantial.	71 FR 75215–75220
12/19/2006 ...	Withdrawal of Proposed Rule to List *Penstemon grahamii* (Graham's beardtongue) as Threatened With Critical Habitat.	Notice of withdrawal, More abundant than believed, or diminished threats.	71 FR 76023–76035
12/19/2006 ...	90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 76057–76079
1/9/2007	12-Month Petition Finding and Proposed Rule To List the Polar Bear (*Ursus maritimus*) as Threatened Throughout Its Range; Proposed Rule.	Notice of 12-month petition finding, Warranted. Proposed Listing, Threatened	72 FR 1063–1099
1/10/2007	Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx.	Clarification of findings	72 FR 1186–1189
1/12/2007	Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass).	Notice of withdrawal, More abundant than believed, or diminished threats.	72 FR 1621–1644
2/2/2007	12-Month Finding on a Petition To List the American Eel as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 4967–4997
2/13/2007	90-Day Finding on a Petition To List the Jollyville Plateau Salamander as Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 6699–6703
2/13/2007	90-Day Finding on a Petition To List the San Felipe Gambusia as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 6703–6707
2/14/2007	90-Day Finding on A Petition to List *Astragalus debequaeus* (DeBeque milk vetch) as Threatened or Endangered.	Notice 90-day petition finding, Not substantial.	72 FR 6998–7005
2/21/2007	90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered and Initiation of a 5-Year Review.	Notice of 5-year Review, Initiation Notice of 90-day petition finding, Not substantial.	72 FR 7843–7852
3/8/2007	90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 10477–10480
03/29/2007 ...	90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered.	Notice 90-day petition finding, Substantial.	72 FR 14750–14759
04/24/2007 ...	Revised 12-Month Finding for Upper Missouri River Distinct Population Segment of Fluvial Arctic Grayling.	Notice of 12-month petition finding, Not warranted.	72 FR 20305–20314

FY 2007 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
05/02/2007 ...	12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	72 FR 24253–24263
05/22/2007 ...	Status of the Rio Grande Cutthroat Trout	Notice of Review	72 FR 28864–28665
05/30/2007 ...	90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 29933–29941
06/05/2007 ...	12-Month Finding on a Petition To List the Wolverine as Threatened or Endangered.	Notice of Review	72 FR 31048–31049
06/06/2007 ...	90-Day Finding on a Petition To List the Yellow-Billed Loon as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	72 FR 31256–31264
06/13/2007 ...	12-Month Finding for a Petition To List the Colorado River Cutthroat Trout as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 32589–32605
06/25/2007 ...	12-Month Finding on a Petition To List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*).	Notice of amended 12-month petition finding, Warranted but Precluded.	72 FR 34657–34661
07/05/2007 ...	12-Month Finding on a Petition To List the Casey's June Beetle (*Dinacoma caseyi*) as Endangered With Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	72 FR 36635–36646
08/15/2007 ...	90-Day Finding on a Petition To List the Yellowstone National Park Bison Herd as Endangered.	Notice of 90-day Petition Finding, Not-substantial.	72 FR 45717–45722
08/16/2007 ...	90-Day Finding on a Petition To List *Astragalus anserinus* (Goose Creek milk vetch) as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	72 FR 46023–46030
8/28/2007	12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered.	Notice of Review	72 FR 49245–49246
9/11/2007	90-Day Finding on a Petition To List Kenk's Amphipod, Virginia Well Amphipod, and the Copepod Acanthocyclops columbiensis as Endangered.	Notice of 90-day Petition Finding, Not-substantial.	72 FR 51766–51770
9/18/2007	12-month Finding on a Petition To List Sclerocactus brevispinus (Pariette cactus) as an Endangered or Threatened Species; Taxonomic Change From Sclerocactus glaucus to Sclerocactus brevispinus, S. glaucus, and S. wetlandicus.	Notice of 12-month petition finding for uplisting, Warranted but precluded.	72 FR 53211–53222

In FY 2007, we provided funds to work on proposed listing determinations for the following high-priority species: 3 southeastern aquatic species (Georgia pigtoe, interrupted rocksnail, and rough hornsnail), 2 Oahu plants (*Doryopteris takeuchii, Melicope hiiakae*), 31 Kauai species (Kauai creeper, *Drosophila attigua, Astelia waialealae, Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *kauaiensis, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Cyanea eleeleensis, Cyanea kuhihewa, Cyrtandra oenobarba, Dubautia imbricata* ssp. *imbricata, Dubautia plantaginea* ssp. *magnifolia, Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Melicope degeneri, Melicope paniculata, Melicope puberula, Myrsine mezii, Pittosporum napaliense, Platydesma rostrata, Pritchardia hardyi, Psychotria grandiflora, Psychotria hobdyi, Schiedea attenuata, Stenogyne kealiae*), 4 Hawaiian damselflies (*Megalagrion nesiotes, Megalagrion leptodemas, Megalagrion oceanicum, Megalagrion pacificum*), and one Hawaiian plant (*Phyllostegia hispida (no common name)*). In FY 2008, we are continuing to work on these listing proposals. In addition, we are continuing to work on several other determinations listed below, which we funded in FY 2007 and are scheduled to complete in FY 2008.

ACTIONS FUNDED IN FY 2007 THAT HAVE YET TO BE COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Wolverine	12-month petition finding (remand).
Western sage grouse	90-day petition finding (remand).
Rio Grande cutthroat trout	Candidate assessment (remand).
Actions With Statutory Deadlines	
Polar bear	Final listing determination.
Ozark chinquapin	90-day petition finding.
Tucson shovel-nosed snake	90-day petition finding.
Gopher tortoise—Florida population	90-day petition finding.
Sacramento valley tiger beetle	90-day petition finding.
Eagle lake trout	90-day petition finding.
Smooth billed ani	90-day petition finding.
Mojave ground squirrel	90-day petition finding.
Gopher Tortoise—eastern population	90-day petition finding.
Bay Springs salamander	90-day petition finding.

ACTIONS FUNDED IN FY 2007 THAT HAVE YET TO BE COMPLETED—Continued

Species	Action
Tehachapi slender salamander	90-day petition finding.
Coaster brook trout	90-day petition finding.
Mojave fringe-toed lizard	90-day petition finding.
Evening primrose	90-day petition finding.
Palm Springs pocket mouse	90-day petition finding.
Northern leopard frog	90-day petition finding.
Shrike, Island loggerhead	90-day petition finding.
Cactus ferruginous pygmy owl	90-day petition finding.

Our expeditious progress so far in FY 2008 in the Listing Program, includes preparing and publishing the following:

FY 2008 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/09/2007	90-Day Finding on a Petition to List the Black-Footed Albatross (Phoebastria nigripes) as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	72 FR 57278–57283.
10/09/2007	90-Day Finding on a Petition To List the Giant Palouse Earthworm as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	72 FR 57273–57276.
10/23/2007	90-Day Finding on a Petition To List the Mountain Whitefish (Prosopium williamsoni) in the Big Lost River, ID, as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	72 FR 59983–59989.
10/23/2007	90-Day Finding on a Petition To List the Summer-Run Kokanee Population in Issaquah Creek, WA, as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	72 FR 59979–59983.
11/08/2007	Response to Court on Significant Portion of the Range, and Evaluation of Distinct Population Segments, for the Queen Charlotte Goshawk.	Response to Court	72 FR 63123–63140.

Our expeditious progress also includes work on listing actions, which we anticipate will be funded in FY 2008, pending final appropriation. These actions are listed below. We are conducting work on those actions in the top section of the table under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high priority listing actions, which include at least one or more species with an LPN of 2, available staff resources, and when appropriate, species with a lower priority if they overlap geographically or have the same threats as the species with the high priority.

ACTIONS ANTICIPATED TO BE FUNDED IN FY 2008 THAT HAVE YET TO BE COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Bonneville cutthroat trout	12-month petition finding (remand).
Pygmy rabbit	90-day petition finding (remand).
Gunnison's prairie dog	12-month petition finding.
Actions with Statutory Deadlines	
Polar bear	Final listing determination.
3 Southeastern aquatic species	Final listing.
Phyllostegia hispida	Final listing.
Yellow-billed loon	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mount Charleston blue butterfly	12-month petition finding.
Goose Creek milk-vetch	12-month petition finding.
White-tailed prairie dog	12-month petition finding.
Mono Basin sage grouse (vol. remand)	90-day petition finding.
Ashy storm petrel	90-day petition finding.
Longfin smelt—San Fran. Bay population	90-day petition finding.
Black-tailed prairie dog	90-day petition finding.
Lynx (include New Mexico in listing)	90-day petition finding.
Wyoming pocket gopher	90-day petition finding.
Llanero coqui	90-day petition finding.
Least chub	90-day petition finding.

ACTIONS ANTICIPATED TO BE FUNDED IN FY 2008 THAT HAVE YET TO BE COMPLETED—Continued

Species	Action
American pika	90-day petition finding.
Dusky tree vole	90-day petition finding.
Sacramento Mts. checkerspot butterfly	90-day petition finding.
Kokanee—Lake Sammamish population	90-day petition finding.
206 species	90-day petition finding.
475 Southwestern species	90-day petition finding.
High Priority Listing Actions	
31 Kauai species [1]	Proposed listing.
8 packages of high-priority candidate species	Proposed listing.

[1] Funds used for this listing action were also provided in FY 2007.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Conclusion

We will add Jollyville Plateau salamander to the list of candidate species upon publication of this notice of 12-month finding on a petition. We request that interested parties submit any new information on status and threats for this species. Natural history and distribution information in particular will help us monitor and focus habitat conservation of this species. Should an emergency situation develop with this or any candidate species, we will act to provide immediate protection, if warranted.

We intend that any proposed listing action for Jollyville Plateau salamander will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available on request from the U.S. Fish and Wildlife Service, Austin Ecological Services Office (see **ADDRESSES**).

Author(s)

The primary author of this document is U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Dated: November 28, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E7–23757 Filed 12–12–07; 8:45 am]

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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.

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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. 50/P.L. 110–132

Multinational Species Conservation Funds Reauthorization Act of 2007 (Dec. 6, 2007; 121 Stat. 1360)

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